

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

F. G. NOYES, as Receiver of WASHINGTON-  
ALASKA BANK, a Corporation,  
Appellant,  
vs.

R. C. WOOD, JOHN L. MCGINN, RAY BRUM-  
BAUGH, J. A. JESSON, JAMES W. HILL,  
E. R. PEOPLES, J. A. HEALEY, JOHN A.  
CLARK and GEORGE PRESTON,  
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

Filed  
JUL 1 - 1915  
F. D. Monckton,  
Clerk.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,  
Fourth Judicial Division.*

No. 1756.

F. G. NOYES, Receiver of Washington-Alaska  
Bank, a Corporation, Organized Under the  
Laws of the State of Nevada,

Plaintiff,

vs

J. A. JESSON, D. H. JONAS, DAVID YARNELL,  
DAN RYAN, JOHN L. McGINN, R. C.  
WOOD, C. J. ROBINSON, W. H. McMUL-  
LEN, C. E. CLAYPOOL, ROBERT SHEP-  
PARD, HANS STARK, JOHN FLYGAR,  
JOHN P. ANDERSON, E. R. PEOPLES,  
JAMES W. HILL, RAY BRUMBAUGH, J.  
A. JACKSON, JOHN DUSENBURY AND  
L. N. JESSON,

Defendants.

**Names and Addresses of Attorneys of Record.**

O. L. RIDER, Venite, Oklahoma, R. F. ROTH, Fair-  
banks, Alaska,

Attorneys for Plaintiff and Appellants.

JOHN L. McGINN, Keystone Apartments, San  
Francisco, Cal., A. R. HEILIG, Fairbanks,  
Alaska,

Attorneys for defendants and Appellees.

[1\*]

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\*Page-number appearing at foot of page of original certified Record.

[Title of Court and Cause.]

**Stipulation as to the Printing of the Record.**

It is hereby stipulated and agreed that in the printing of the record herein for the consideration of the Court on appeal and cross-appeal that the title of the Court and cause in full on all the pages shall be omitted except on the first page, and inserted in place and stead therein "Title of Court and Cause."

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG,

JOHN L. MCGINN.

Attorneys for Defendants, Wood, Hill, Peoples,  
Brumbaugh, McGinn and J. A. Jesson.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. July 6, 1914. Angus McBride, Clerk. [2]

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[Title of Court and Cause.]

**Praeipie Indicating Portions of the Record to be  
Incorporated into the Transcript on Cross-Ap-  
peal.**

To the Clerk of said Court:

Please prepare transcript of the record on the cross-appeal of the plaintiff in the above-entitled suit, and incorporate therein the following portions of said record only, to wit:

1. Amended complaint of plaintiff, filed on the 23 day of May, 1913.
2. Separate answer of defendants Wood, Healey and McGinn, filed on the 29 day of Sept., 1913.
3. Demurrer to the separate answer of Wood, Healey and McGinn, filed on the 2 day of Oct., 1913.
4. Ruling on said demurrer, entered on the 18th day of April, 1914.
5. Reply to separate answer of Wood, Healey and McGinn, filed on the 21 day of April, 1914.
6. Amended answer of J. A. Jesson, Brumbaugh, Peoples, Hill, Clark and Preston, filed on the 21 day of April, 1914.
7. Motion to strike portions of amended answer of J. A. Jesson, Brumbaugh, Peoples, Hill, Clark and Preston, filed on the 22 day of April, 1914.
8. Order sustaining the motion to strike, entered — on the 22 day of April, 1914. [3]
9. Reply to amended answer of defendants J. A. Jesson, Brumbaugh, Peoples, Hill, Clark and Preston, filed on the 22 day of April, 1914.
10. Findings of fact and conclusions of law, filed on the 11 day of June, 1914.
11. Judgment and decree, entered on the 15 day of June, 1914.
12. Plaintiff's bill of exceptions, filed on the 6 day of July, 1914.
13. Order settling plaintiff's bill of exceptions, entered on the 6 day of July, 1914.



14. Plaintiff's petition for appeal, filed 28 day of Jan., 1915.
15. Order allowing plaintiff's appeal, entered on the 28 day of Jan., 1915.
16. Plaintiff's assignment of errors, filed on the 28 day of Jan., 1915.
17. Plaintiff's bond on appeal and order approving same, filed on the 20th day of February, 1915.
18. Citation on plaintiff's appeal, and service thereon, filed on the 28 day of Jan., 1915.
19. Order extending return day and time for docketing said cause on plaintiff's appeal, filed on the 20th day of February, 1915.
20. Stipulation for printing transcript on appeal, filed on the 6 day of July, 1914.
21. Praecipe for transcript on plaintiff's appeal, filed on the 28 day of Jan., 1915.

Signed this 9th day of September, A. D. 1914.

O. L. RIDER,

Attorney for Plaintiff.

[Endorsed]: No. 1756. F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants. Praecipe for Transcript on Cross-appeal.

Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk.

[4]



[Title of Court and Cause.]

**Amended Complaint.**

Plaintiff complains of defendants and for cause of action alleges:

(I)

The Washington-Alaska Bank is, and ever since the 21st day of January, 1908, has been a corporation duly organized and existing under and by virtue of the laws of the State of Nevada. Said Washington-Alaska Bank was originally incorporated under the corporate name of "The Fairbanks Banking Company," but afterward, on or about, or shortly prior to, the 14th day of September, 1910, its name was by amendments to its articles of incorporation duly changed to "Washington-Alaska Bank." The authorized capital stock of plaintiff corporation is and was at all times since its incorporation \$300,000.00, divided into 3,000 shares of the par value of \$100.00 each. In and by the articles of incorporation of said Fairbanks Banking Company, a corporation, it was provided among other things that the Board of Directors of said corporation should consist of twelve members, four to hold office for six months, or until their successors were elected and qualified, four to hold office for twelve months, or until their successors |[5] were elected and qualified, and four to hold office for eighteen months, or until their successors were elected and qualified.

(II)

On and prior to the 14th day of March, 1908, the defendants R. C. Wood and James W. Hill, and one

E. T. Barnette, were, as partners, engaged in the business of banking at the city of Fairbanks, Territory of Alaska, under the firm name and style of "The Fairbanks Banking Company."

(III)

The Fairbanks Banking Company, a corporation, was organized for the purpose of taking over and acquiring the business heretofore conducted and carried on by the Fairbanks Banking Company, a partnership, as hereinbefore alleged, and for the purpose of promoting, organizing and commencing the business of said Fairbanks Banking Company, a corporation, the said E. T. Barnette, R. C. Wood and James W. Hill, circulated and caused to be circulated in the city of Fairbanks and vicinity, stock subscription lists subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were in words and figures as follows:

"KNOW ALL MEN BY THESE PRESENTS: That, whereas, the organization of a corporation is contemplated by the undersigned under the laws of the State of Nevada, to be known as the Fairbanks Banking Company, with a capital stock of Three Hundred Thousand Dollars, divided into Three Thousand shares of the par value of One Hundred Dollars each. The object of which said corporation is to carry on a general banking business in the town of Fairbanks, Alaska, and to absorb the present Fairbanks Banking Company, and such other banking institutions as may be deemed advisable; and whereas steps are now being taken for the organiza-

tion of such corporation under the laws of said State of Nevada, but owing to the distance between said State of Nevada and the town of Fairbanks, Alaska, considerable delay must necessarily ensue before such corporation can be created and the organization thereof perfected; and whereas, we, the undersigned, each and all of us are desirous of becoming stockholders in said corporation for the number of shares hereinafter by us set opposite our respective names, and are desirous that in order that the capital stock of said corporation shall be fully subscribed, and the names and number of stockholders of said new corporation may be known to us, that subscriptions for such stock should now be made.

NOW, THEREFORE, in consideration of the premises, we, the undersigned, do hereby promise and agree to and with each other and with said new corporation to be formed [6] to be known as the Fairbanks Banking Company, to subscribe, and each of us do hereby subscribe of the capital stock of said Fairbanks Banking Company, the number of shares by us set opposite our respective names and that when said corporation is organized and the stock thereof issued to us we will either pay to the treasurer of said corporation the par value thereof, or such an amount thereof as we can conveniently pay; or, in the event at said time we are unable to make any cash payment upon said stock, that each will give his promissory note for the individual amount of stock subscribed by him; one due on or before the first day of June, 1908, for twenty-five per cent of the amount of the capital stock subscribed by him,

and the other for seventy-five per cent thereof, which shall become due and payable on or before the first day of July, 1908; said notes to bear interest at the rate of one per cent per month from the date of the issuance of the stock. If at the time the stock shall be issued any of the undersigned shall pay thereof an amount equal to twenty-five per cent thereof, then such person is to execute his note for the remaining seventy-five per cent due on or before the first day of July, 1908. If said payment so made shall not equal twenty-five per cent of the par value thereof then such individual agrees to execute a note for the amount equal to twenty-five per cent thereof, which shall become due and payable on or before the first day of June, 1908, and a note for the remaining seventy-five per cent as hereinbefore set forth. It is expressly understood and agreed that said corporation is to retain and remain the owners of stock until the same is fully paid.

IN WITNESS WHEREOF we have hereunto set our hands and seals this —— day of January, 1908.”

(IV)

Said subscription lists were headed by said E. T. Barnette, subscribing for 440 shares of the capital stock of said corporation; R. C. Wood, 220 shares; James W. Hill, 220 shares; and were then signed by various other persons, the total subscriptions aggregating over 2,400 shares. The defendant John L. McGinn subscribed for 100 shares; the defendant J. A. Jesson for 100 shares; the defendant D. H. Jonas for 100 shares; the defendant David Yarnall for 100 shares; the defendant L. H. Jesson for 100

shares; the defendant John Flygar for 20 shares; the defendant Hans Stark for 100 shares; the defendant Dan Ryan for 25 shares; the defendant C. R. Claypool for 50 shares; the defendant C. J. Robinson for 50 shares; the defendant B. R. Dusenbury for 50 shares; the defendant J. A. Healey for 5 shares; the defendant George Preston for 5 shares; and the defendant John P. Anderson for 25 shares. ¶[7]

(V)

The first meeting of the incorporators and the subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held at the city of Fairbanks, Alaska, on March 12, 1908, and a Board of twelve Directors for said corporation, named and selected by E. T. Barnette, were elected, and a resolution passed and entered on the minutes as follows:

“RESOLVED, that the matter of taking over the property of the Fairbanks Banking Company, the copartnership, consisting of E. T. Barnette, J. W. Hill and R. C. Wood, be left to the Board of Directors.” Said first Board of Directors was composed of said E. T. Barnette, and the defendants David Yarnall, J. A. Jesson, D. H. Jonas, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar and John P. Anderson.

(VI)

On the 12th day of March, 1908, said Board of Directors met at the city of Fairbanks, Alaska, and elected as officers of said corporation, E. T. Barnette, president; the defendant James W. Hill, vice-president; the defendant R. C. Wood, cashier; and the



defendant B. R. Dusenbury, assistant cashier, secretary and treasurer, and on the 13th day of March, 1908, said Board of Directors held an adjourned meeting, and authorized the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a partnership, and thereafter said purchase and acquisition, and the terms thereof were reduced to writing in a contract signed and executed by the parties, dated March 16th, 1908, a true copy of which is hereto annexed marked "EXHIBIT ONE" and made a part of this complaint.

(VII)

That in accordance with said contract "EXHIBIT ONE," stock in said corporation, the Fairbanks Banking Company, was issued to E. T. Barnette, 260 shares; James W. Hill, 130 shares; and R. C. [8] Wood, 120 shares; and the assets of said copartnership enumerated and described in said contract "EXHIBIT ONE" were transferred to said corporation. On March 14th, 1908, there was also issued to the various subscribers therefor, stock in said corporation to the amount of 1502 shares, of the par value of \$150,200.00, and thereupon the said corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, Territory of Alaska, and thereafter continued to carry on and conduct said business until and including January 4th, 1911.

(VIII)

The capital stock of the Gold Bar Lumber Company, a corporation, which was sold and transferred

by said copartnership, the Fairbanks Banking Company, to the said Fairbanks Banking Company, a corporation, for \$341,949.00, did not cost the said copartnership in excess of the sum of \$248,067.89, at which sum it was carried on the books of said copartnership at and prior to the transfer to the said corporation, and was at the date of the transfer of a value less than \$248,067.89, and said stock was transferred to and received by said Fairbanks Banking Company, a corporation, at an arbitrarily increased and grossly fraudulent over-valuation of more than \$93,881.11, all of which was done and accomplished with full knowledge, co-operation and consent of all the defendants, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnall, and John P. Anderson, who were then and there Directors of said Fairbanks Banking Company, a corporation, and of the defendant R. C. Wood, who was then and there its cashier and a member of the copartnership, Fairbanks Banking Company, and of the defendant James W. Hill, who was then and there its vice-president and a member of said copartnership, and of the defendant B. R. Dusenbury, who was then and there its assistant cashier, secretary and treasurer, and of the defendant John L. McGinn, who was then and there attorney and legal adviser both of said copartnership and said corporation Fairbanks Banking Company, and who afterward [9] became a director and vice-president of said corporation, as hereinafter alleged. Said Gold Bar Lumber Company was en-

gaged in the business of manufacturing and selling lumber in the State of Washington, which business was then and there and ever since has been and still is of an exceedingly hazardous speculative nature, and the certificates representing the capital stock in said corporation, the Gold Bar Lumber Company, were not at the time of the organization of said corporation, the Fairbanks Banking Company, in the possession of said copartnership, nor were they delivered to said corporation, The Fairbanks Banking Company.

### IX.

That the notes, loans and discounts sold and transferred to said Fairbanks Banking Company, a corporation, by said Fairbanks Banking Company, copartnership, were accepted by said corporation at their face value with the knowledge, consent and approval of the defendants J. A. Jesson, D. H. Jonas, David Yarnall, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, R. C. Wood, James W. Hill, John L. McGinn and B. R. Dusenbury, then directors and officers of said corporation as aforesaid. That of said notes so sold and transferred as aforesaid, a large amount were then past due, worthless and uncollectible, said amount being excess of \$53,000.00, all of which are still unpaid and without substantial value, a list of which is as follows:



Maker	When due	Amount
Wm. Casey	May 31, 05	\$ 40.00
Gelling & Bechtolt	Sept, 15, 07	1050.00
Ensor & Griffith	Sept. 15, 06	435.00
Fairburn et al.	Jul. 15, 07	1332.00
E. D. Howe	Mar. 4, 07	457.25
Wm. James	Jun. 15, 07	311.97
Alex Larson	Jan. 24, 07	354.35
D. W. Truitt	Sep. 1, 07	1000.00
C. Timmerman	May 17, 05	105.00
Emily Waters	Dec. 5, 07	40.00
Wm. Barrett	Jun. 23, 06	8407.58
Jas. Frost	Jun. 1, 07	850.00
Geo. Fenwick	Nov. 31, 06	2000.00
P. Gallagher	Sep. 23, 07	133.00
W. F. Green	Aug. 1, 07	1332.74
F. Schaupp	Feb. 27, 07	3785.22
Tharp & Rusk	Sep. 14, 07	2500.00
J. Worgan	Jul. 1, 06	200.00
D. H. Berger	Jul. 28, 07	550.
J. A. York	Oct. 14, 04	100.
“ “	Feb. 1, 05	100.
“ “	Mar. 15, 05	206.
Tanana Electric Co.	Dec. 15, 07	27997.38
		<hr/>
		\$53287.49

[10]

That it was then and there well known to said defendants directors and officers as aforesaid, and by each of them or by the exercise of ordinary care might have been so known to them, and each of them, that said notes above listed were at the time

they were so accepted and transferred, past due and worthless or without substantial value.

(X)

The 1502 shares of the capital stock in said corporation, The Fairbanks Banking Company, so issued to the various subscribers therefor on March 14th, 1908, were all paid for by the promissory notes of the said various subscribers and not in cash, and a large amount of said notes were and still are worthless and uncollectible, and have never been paid, said amount being of the face value of \$22,982.33.

(XI)

With an issued capital stock of \$202,200.00, paid for as hereinbefore alleged, and not otherwise, and with no other [11] assets than those of the Fairbanks Banking Company, a copartnership, as mentioned and set forth in "EXHIBIT ONE" added to the said stock subscription notes of the face value of \$150,200.00, the Fairbanks Banking Company, a corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, and assumed not only the deposits debts and other liabilities of the Fairbanks Banking Company, a copartnership, amounting to \$538,940.31, but also an alleged special deposit of \$200,000.00 of E. T. Barnette, never in fact deposited by him, but being the alleged capital claimed by said Barnette, and by the contract "Exhibit One" agreed to be paid to him.

(XII)

On March 16, 1908 when said Fairbanks Bank-

ing Company, a corporation, so commenced business with said assumed liabilities of 738,940.31, said Fairbanks Banking Company, a corporation, was actually insolvent in this: That its assets were then insufficient in value to pay its debts, all of which its then directors and officers hereinbefore mentioned well knew, or by the exercise of ordinary care might have known. And furthermore, said Fairbanks Banking Company, a corporation, at and for a long time after it commenced business, was not paying and did not pay in cash or lawful money, demands made upon it in the ordinary course of business. Prior to the 16th day of March, 1908, said Fairbanks Banking Company, a copartnership, had for a considerable time ceased and failed and refused to pay in cash or lawful money demands made upon it in the ordinary course of business, and was upon what was termed a "scrip" basis; that is, was paying demands made upon it by issuing and paying out its own circulating notes. At the time said Fairbanks Banking Company, a corporation, commenced business, it assumed a liability of \$64,737.00 for outstanding circulating notes of the Fairbanks Banking Company, a copartnership, and had in cash, including gold dust, bullion and lawful money only the sum of \$38,511.87. [12]

(XIII)

Notwithstanding the facts hereinbefore and hereinafter alleged, the said Fairbanks Banking Company, a corporation, continued after the 16th day of March, 1908, to carry on the general business of banking and of receiving and soliciting deposits, and said bank

and the defendants as its directors, officers and employees at all time falsely and wrongfully represented and held out to the public generally that said Fairbanks Banking Company, a corporation, had paid-up capital stock of \$300,000.00

(XIV)

The said defendants David Yarnall, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, John P. Anderson, D. H. Jonas and said E. T. Barnette continued to be and act as directors of said Fairbanks Banking Company, a corporation, and to manage and control its business as such from said 12th day of March, 1908, until the 12th day of September, 1908, when the term of office of David Yarnall, Dan Ryan, C. J. Robinson and M. H. McMullen expired. On said 12th day of September, 1908, said David Yarnall, Dan Ryan, C. J. Robinson, were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, the defendant E. R. Peoples was duly elected director of said corporation for the term of eighteen months, and the defendant James W. Hill was duly elected a director of said corporation for the term of six months to take the place of Hans Stark, resigned. For the entire period from September 12th, 1908, to March 12, 1909, the duly elected and acting Board of Directors of said Fairbanks Banking Company, a corporation, consisted of the defendants J. A. Jesson, John P. Anderson, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples

and said E. T. Barnette, and during said period they managed, conducted and controlled said Fairbanks Banking Company, a corporation, and its business as such. On said March 12th, 1909, said defendants C. E. Claypool, Robert Sheppard, James W. [13] Hill, and John Flygar were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, and on March 13th, 1909, the defendant Ray Brumbaugh was duly elected a director of said corporation in the place of John P. Anderson, who had vacated his office by remaining absent from the District of Alaska. From and including March 13, 1909, to the 13th day of September, 1909, the duly elected and acting Board of Directors of said Fairbanks Banking Company, a corporation, were the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples and said E. T. Barnette, and during said period they managed, conducted and controlled its business as such. On September 13th, 1909, the defendants J. A. Jesson, Ray Brumbaugh, and D. H. Jonas and said E. T. Barnette were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, and the defendant John L. McGinn was duly elected a director thereof for six months to fill the place vacated by the defendant E. R. Peoples. From and including the 13th day of September, 1909, to the 12th day of April, 1910, the duly elected and acting Board of Directors of said Fairbanks Banking Company, a corporation, and



who managed, controlled and directed its business as such, consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, and John L. McGinn, and said E. T. Barnette, except that on November 13th, 1909, the resignations as directors of Dan Ryan, and C. E. Claypool were accepted and the defendants R. C. Wood and J. A. Jackson were duly elected in their place, and from November 13th, 1909, to April 12th, 1910, the said defendants R. C. Wood and J. A. Jackson were duly elected and acting directors of said Fairbanks Banking Company, a corporation. On said April 12th, 1910, the said defendants David Yarnall, J. A. Jackson, C. J. Robinson, and John L. McGinn were duly re-elected directors of said Fairbanks Banking Company, a corporation, and thereafter and until September 12th, 1910, the [14] Board of Directors of said Fairbanks Banking Company a corporation, who managed, controlled and conducted its business as such consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, R. C. Wood, J. A. Jackson, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, C. J. Robinson, and John L. McGinn, and said E. T. Barnette, except that on May 12th, 1910, the defendants John L. McGinn, and R. C. Wood resigned as such directors, and on said 12th day of May, 1910, the defendant John A. Clark was duly elected in the place of the defendant John L. McGinn, and thereafter served and acted as such director, and on June 11th, 1910, J. A. Healey was duly elected in the place of R. C.

Wood, and thereafter served and acted as such director. Prior to September 12th, 1910, to take effect on that day, the number of directors of said Fairbanks Banking Company, a corporation, had been duly and regularly changed by an amendment to its articles of incorporation, from twelve directors to seven directors, to hold office for one year, and on said 12th day of September, 1910, the defendants J. A. Jackson, J. A. Jesson, J. A. Clark, J. A. Healey, D. H. Jonas and George Preston and said E. T. Barnette, were duly elected directors of said Fairbanks Banking Company, a corporation and from said 12th day of September, 1910, until and including January 4th, 1911, they managed and directed and controlled the business of said corporation as such, and are still directors thereof.

(XV)

The defendant James W. Hill, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the Board of Directors thereof, chosen and elected first Vice-president of said corporation, and the said defendant James W. Hill, accepted said office and entered upon the duties thereof, and thereafter the said defendant, James W. Hill, continued to act as such vice-president, and to assist in managing and conducting the affairs and business of said Fairbanks Banking [15] Company, a corporation, as an executive officer thereof and a member of its executive committee, under salary until July 1st, 1909, and also continued thereafter to act as director thereof as hereinbefore alleged.

## (XVI)

The defendant B. R. Dusenbury, although not a member of the Board of Directors of said Fairbanks Banking Company, a corporation was, at the first meeting of the Board of Directors thereof, chosen and elected assistant cashier, and secretary and treasurer thereof, and said B. R. Dusenbury thereupon accepted said offices and entered upon the duties thereof, and thereafter said defendant B. R. Dusenbury continued to act as such assistant cashier, secretary and treasurer, and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer thereof and a member of its executive committee, until May 12th, 1909. On said May 12th, 1909, said defendant B. R. Dusenbury was duly elected first vice-president of said Fairbanks Banking Company, a corporation, the duties of which he thereupon assumed, and he thereafter continued to be such vice-president and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer and member of its executive committee, until October 12th, 1909.

## (XVII)

Said defendant L. N. Jesson, although not a member of the Board of Directors of said Fairbanks Banking Company, a corporation, was on the 12th day of September, 1908, duly chosen and elected second vice-president thereof, and said defendant L. N. Jesson thereupon accepted said office and entered upon the duties thereof, and thereafter said defend-



ant L. N. Jesson continued to act as such second vice-president, and continued to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive [16] officer thereof, and as a member of the executive committee thereof, until the 12th day of September, 1910.

(XVIII)

Said defendant, R. C. Wood, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the Board of Directors thereof, duly chosen and elected cashier thereof, and the said R. C. Wood thereupon accepted said office and entered upon the duties thereof, and acted and performed the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908, and was also afterward director and manager of said Fairbanks Banking Company, a corporation, as hereinbefore and hereinafter alleged. [17]

XIX.

Shortly after said corporation, the Fairbanks Banking Company, commenced business said corporation wrongfully and unlawfully began to reduce its issued capital stock by accepting the surrender thereof and giving in return therefor either cash or the stock subscription notes given for said stock, a list of which stock so surrendered, together with the date of surrender, the number of shares surrendered, the name of the party surrendering, and the amount of cash or the subscription notes returned therefor, is as follows, to wit:

Date	Number of shares	Party	Amount
1908.			
Jun. 30	130	R. C. Wood	\$13,000.00
Jul. 15	1	P. B. Walsh	100.00
Jul. 20	10	Thomas, E.	1,000.00
Jul. 20	20	McBride, A.	2,000.00
Jul. 20	2	Letnes, Anton	200.00
Jul. 20	10	A. N. Larson,	1,000.00
Jul. 20	2	F. E. Johnson	200.00
Jul. 20	2	J. L. Tobin	200.00
Jul. 20	5	Harry Cribb	500.00
Jul. 20	2	S. Hall Young,	200.00
Jul. 20	5	A. J. Nordale	500.00
Jul. 20	10	Barrett-Sickenger	1,000.00
Jul. 23	5	E. A. Suter	500.
Jul. 29	10	S. R. Weiss	1,000.
Aug. 5	20	Osmund Olson	2,000.
Aug. 6	5	A. J. Williams	500.
Aug. 8	10	R. R. Myers	1,000.
Aug. 12	5	D. Courtemanche	500.
Aug. 14	10	E. M. Keys	1,000.
Sep. 18	10	Oscar Goetz	1,000.
Sep. 18	5	G. A. Vedin	500.
Oct. 24	2	McDonnell	200.
Nov. 19	10	B. E. Johnson	1,000.
Nov. 19	100	Strandberg Bros.,	10,000.
Nov. 25	10	Strandberg Emma	1,000.
Dec. 12	2	F. E. Johnson	200.00
1909.			
Feb. 9	2	John Clifford	200.
Feb. 19	5	Geo. Jestel	500.

Date	Number of shares	Party	Amount
Jun. 10	10	Hart & McConnell	1,000.
Sep. 21	5	Lewis Enstrom	500.
Sep. 21	5	Oscar Enstrom	500.
Oct. 28	10	H. B. Parkin	1,000.
Oct. 28	1	Alex Cameron	100.
Oct. 28	2	Edith MacCormack	200.
Oct. 28	2	J. W. MacCormack	200.
Nov. 10	5	Francis H. Taylor	500.
Nov. 23	5	McGowan & Clark	500.
1910.			
Jan. 18	5	Horton & Dunham	500.
Oct. 25	100	John L. McGinn	10,000.
			<hr/>
			\$56,000.00
			<hr/>

[18]

That during all of the time from and including said June 30th, 1908, to and including said October 25th, 1910, the liabilities of said corporation to its general creditors, greatly exceeded its assets and by accepting the surrender of its capital stock and returning therefor cash or subscription notes, as aforesaid, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, and the same were, in the manner and amounts aforesaid, withdrawn and divided among said stockholders of said corporation; that the surrender of said stock and the return of said cash and notes as above set forth, were made to and by said corporation with full knowledge, consent and approval of the defendants and each of them who

constituted its Board of Directors and officers on the dates aforesaid, or by the exercise of ordinary care the same could have been known to them and each of them; that the terms of office of the defendants herein as officers and directors of said Fairbanks Banking Company, a corporation, were as follows:

D. H. Jonas	Director	Mar. 12, 1908	to Jan. 4, 1911
J. A. Jesson	"	"	"
C. E. Claypool	"	"	Nov. 13, 1909
Hans Stark	"	"	Aug. 12, 1908
John Flygar	"	"	Sep. 2, 1910
C. J. Robinson	"	"	"
John P. Anderson	"	"	Mar. 13, 1909
M. H. McMullen	"	"	Sep. 12, 1908
Dan Ryan	"	"	Nov. 13, 1909
David Yarnell	"	"	Sep. 12, 1910
Robert Sheppard	"	"	"
E. R. Peoples	"	Sep. 12, 1908	Sep. 13, 1909
Ray Brumbaugh	"	Mar. 13, 1909	Sep. 12, 1910
John L. McGinn	"	Sep. 13, 1909	May 12, 1910
R. C. Wood	"	Nov. 13, 1909	"
J. A. Jackson,	"	"	Jan. 4, 1911
John A. Clark	"	May 12, 1910	"
J. A. Healey	"	Jun. 11, 1910	"
George Preston	"	Sep. 12, 1910	"
James W. Hill	"	Sep. 12, 1908	Sep. 12, 1910
John L. McGinn	Attorney	Feb. 12, 1908	May 12, 1910
L. N. Jesson, Second Vice-President and Executive Committeeman		Sep. 12, 1908	Sep. 12, 1910
James W. Hill, Vice-President and Executive Committeeman		Mar. 12, 1908	Jul. 1, 1909
R. C. Wood, Cashier		"	Jun. 30, 1908
R. C. Wood, General Mngr.		Sep. 13, 1909	May 12, 1910
B. R. Dusenbury, Assistant Cashier and Secretary-Treasurer.		Mar. 12, 1908	May 12, 1909
B. R. Dusenbury, Vice-President and Executive Committeeman,		May 12, 1909	Oct. 12, 1909
John L. McGinn, Vice-President,		Oct. 12, 1909	May 12, 1910

## (XX)

In addition to the 2022 shares of capital stock in said corporation, the Fairbanks Banking Company, issued on March 14th, 1908, there was afterward issued to various persons in exchange for cash, notes or other considerations, one hundred and thirty-four shares and no more, but by reason of the surrender and cancellation of the shares as mentioned in the preceding paragraph hereof, the total issued capital stock never exceeded 2156 shares, and after November 9th, 1909, never exceeded 1726 shares. [20]

## XXI.

In addition to the 520 shares of the capital stock in said Fairbanks Banking Company, a corporation, issued and delivered to said Barnette, Hill and Wood, the said Barnette, Hill and Wood did, after the 16th day of March, 1908, compute or cause to be computed to March 15th, 1908, all accrued interest on the loans and discounts of the Fairbanks Banking Company, a copartnership, which, in accordance with "Exhibit One" attached to the complaint, herein, were turned over to said Fairbanks Banking Company, a corporation. That prior thereto, to wit, on March 12th, 1908, the Board of Directors of said Fairbanks Banking Company, a corporation, authorized and directed that interest on said notes and discounts be computed to said March 15th, 1908, the same to be payable on or before December 31st, 1908, and that the amount of such accrued interest be placed to the credit of the Fairbanks Banking Company, a copartnership, all of which was done with the knowledge, consent and approval of the defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, Hans Stark, John Flygar,



C. J. Robinson, John P. Anderson, M. H. McMullen, Dan Ryan, and David Yarnall, directors as aforesaid, and of the said R. C. Wood its cashier, John L. McGinn its attorney and legal advisor, James W. Hill, its vice-president, and B. R. Dusenbury its assistant cashier, secretary-treasurer. That pursuant to said authorization and direction, on March 23d, 1908, the interest account of said Fairbanks Banking Company, a corporation, was charged with the amount of \$39,642.81 as such accrued interest, and the same credited on the books of said corporation to an account known and styled "Old Bank Interest Account" That afterward, on August 5th, 1908, with the express knowledge, consent and approval of the defendants D. H. Jonas, James W. Hill, B. R. Dusenbury and Hans Stark, acting as members of the executive committee of said Fairbanks Banking Company, a corporation, there was issued to the said R. C. Wood a certain certificate of deposit, due December 31st, 1908, in the sum of \$10,000.00, as an advancement, on account of such accrued interest. That afterward, to wit, on November 9th, 1908, the said James W. Hill, with the express knowledge, [21] consent and approval of the defendants D. H. Jonas, Dan Ryan, James W. Hill, B. R. Dusenbury and L. N. Jesson as members of said executive committee, was authorized to withdraw \$5,000.00 as an advancement on account of said accrued interest. That afterward, to wit, on December 31st, 1908, there was placed on the books of said corporation to the credit of said E. T. Barnette \$19,741.79, and to the credit of said James W. Hill and R. C. Wood, each \$9870.90, making a total of \$39,473.69 as such accrued interest,

and the same was paid to each of said parties. That said interest was so computed and paid by said corporation out of its funds and without reference to whether or not the same had been collected from the makers of said notes. That as to not less than \$53-287.49 of said notes, said interest had not in fact been paid by said makers thereof, and the same was then and ever since said December 31st, 1908, has been due and unpaid and uncollectible, a list of which said notes is set out in paragraph IX of the complaint as amended. That plaintiff has no means of knowing the rate at which such accrued interest was figured, but alleges that the same is within the knowledge of said defendants. Plaintiff further alleges that on said December 31st, 1908, the defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, John P. Anderson, Dan Ryan, David Yarnall, Robert Sheppard, E. R. Peoples and James W. Hill, were members of the Board of Directors of said Fairbanks Banking Company, a corporation, and the defendant John L. McGinn was its attorney and legal advisor, the defendant L. N. Jesson, its second vice-president and a member of its executive committee, the defendant James W. Hill, its vice-president and a member of its executive committee, and the defendant B. R. Dusenbury its assistant cashier and secretary-treasurer, and said payment was made with the knowledge, consent and approval of each of said defendants, or by the exercise of ordinary care could have been known to them and each of them. That said interest was so allowed and paid without any consideration therefor. [22]

## (XXII)

On and for a long time prior to the 12th day of May, 1909, there were engaged in business at the city of Fairbanks, other than the said Fairbanks Banking Company, a corporation, two banks, the First National Bank, a corporation organized under the laws of the United States, and the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington. (Said latter-named corporation will hereinafter be called the Washington-Alaska Bank of Washington, to distinguish it from the Washington-Alaska Bank, of which plaintiff is receiver). On or about May 12th, 1909, the said Fairbanks Banking Company, a corporation, acting through its president, E. T. Barnette, and with the knowledge, consent and approval of its Board of Directors, and other officers, entered into an agreement with the Washington-Alaska Bank of Washington, in and by which said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington, agreed to, and they did, on or about said May 12th, 1909, purchase and acquire one-half each, the entire capital stock of said First National Bank. The capital stock of said First National Bank was then Fifty Thousand Dollars, and it had, or claimed to have, a surplus of Fifty Thousand Dollars. Said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank, of Washington, paid for the entire capital stock of the said First National Bank the sum of \$62,500.00 each, or a total sum of \$125,000.00. That at the time said capital stock was so purchased, the



said First National Bank was engaged actively in the banking business in Fairbanks, Alaska, and ever since has been and now is so engaged. [23]

### XXIII.

On or about September 13th, 1909, the said Fairbanks Banking Company, a corporation, acting through its president, E. T. Barnette, with the express knowledge, consent and approval of the defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, Dan Ryan, David Yarnell, Robert Sheppard, E. R. Peoples, Ray Brumbaugh, John L. McGinn and James W. Hill, constitution its Board of Directors, and of said L. N. Jesson, its second vice-president and a member of its executive committee, and the said B. R. Dusenbury, its vice-president and also a member of its executive committee, purchased of and from W. H. Parsons, Falcon Joslyn, John Schram and others, the entire capital stock of the Washington-Alaska Bank of Washington, and paid therefor the sum of \$250,000.00 of the money and assets of the Fairbanks Banking Company, a corporation. On the date of said purchase, the said Washington-Alaska Bank of Washington had an issued capital stock of \$150,000.00, and claimed to have, or apparently had according to its books, a net surplus and undivided profit of \$66,839.16, and no more. On said September 13th, 1909, the said Washington-Alaska Bank of Washington had in its apparent assets, however, the sum of \$70,040.10 of loans past due, and which were and still are without substantial value, and was carrying its real estate and fixtures at \$10,000.00 in

excess of their real value. Said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants aforesaid, its then directors and officers, as aforesaid, on said September 13th, 1909, paid to the stockholders of the Washington-Alaska Bank of Washington for said capital stock thereof a premium or bonus of more than \$100,000.00 over and above the then paid-in capital stock of said Washington-Alaska Bank of Washington, and over and above the actual value thereof, and thereby wrongfully and fraudulently lost and dissipated more than \$100,000.00 of the funds and assets of the said Fairbanks Banking Company, a corporation, and greatly aggravated and increased its already insolvent condition. [24]

(XXIV)

Upon and after the purchase and acquisition by the Fairbanks Banking Company, a corporation, of the said capital stock of said Washington-Alaska Bank of Washington, the said Fairbanks Banking Company, a corporation, acting through its Board of Directors, and by and with the knowledge, consent and approval of the defendant L. N. Jesson, its second vice-president, selected and appointed the defendant R. C. Wood, who was then cashier of the First National Bank, manager of the three banks, the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, and said three banks continued thereafter until on or about the 12th day of May, 1910, to be managed and operated by the defendant R. C. Wood, as manager, but ostensibly as separate and distinct and unassociated banks. [25]

## (XXV)

On April 10th, 1910, the said Fairbanks Banking Company, a corporation, being then and there the owner and in control and management of the Washington-Alaska Bank of Washington, caused said Washington-Alaska Bank of Washington to declare and pay to the Fairbanks Banking Company, a corporation, as the owner of the entire capital stock of the said Washington-Alaska Bank of Washington, a dividend of thirty-three and one-third per cent on the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00. At the time said dividend was so declared and paid, the entire capital stock of the Washington-Alaska Bank of Washington had been owned by said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington had been with the said Fairbanks Banking Company, a corporation, and said First National Bank, under the joint management of the defendant R. C. Wood, for the period of seven months, and during said seven months the net amount of surplus undivided profits and earnings, as shown by the books of said Washington-Alaska Bank of Washington, had decreased from \$66,839.16 to \$67,169.76, or a net loss of \$9,669.40 for seven months' operations. On the day said dividend was so declared and paid to said Fairbanks Banking Company, a corporation, by said Washington-Alaska Bank of Washington, the said Washington-Alaska Bank of Washington had a capital stock of \$150,000.00, and an alleged and apparent surplus (as shown by the books) of \$57,169.76, but on said date it had among its assets, loans and dis-

counts past due without substantial value, and which have not yet been paid and cannot be collected, amounting to \$76,005.35, and had invested in a certificate of deposit of its insolvent owner, the Fairbanks Banking Company, a corporation, the sum of \$125,000.00.

(XXVI)

On said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then Board of Directors, [26] ordered and directed said \$50,000.00 received as dividend from said Washington-Alaska Bank of Washington, to be disposed of by crediting \$25,000.00 thereof to the stock account, thus reducing the amount at which the entire capital stock of the Washington-Alaska Bank of Washington was carried on the books of the Fairbanks Banking Company, a corporation, to \$225,000.00, and the other \$25,000.00 of said dividend was ordered added to the alleged earnings or net profits on hand of the said Fairbanks Banking Company, a corporation. Thereupon, on said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then Board of Directors, by a resolution entered on the minutes of the said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of \$168,600.00 a dividend of twenty per cent, amounting to \$33,720.00, which said dividend was thereupon actually paid to the then stockholders of the said Fairbanks Banking Company, a corporation. [27]

XXVII.

On said 12th day of April, 1910, at and before the



time when the same was ordered to be paid, the said Fairbanks Banking Company, a corporation, was, and long prior thereto had been in a grossly insolvent and failing condition. After adding to the apparent surplus, undivided profits and earnings then on hand the sum of \$25,000.00 of the dividend received from the Washington-Alaska Bank, of Washington, said Fairbanks Banking Company, a corporation, had on hand in apparent surplus, undivided profits and earnings the sum of \$32,749.82, while the dividend declared and paid amounted to \$33,720.00. Said Fairbanks Banking Company, a corporation, had in fact on said date no earnings, surplus or undivided profits on hand out of which said dividend could legally be paid, but on the contrary had at and prior to said date neither capital nor surplus in this; said Fairbanks Banking Company, a corporation, had on said date an issued capital stock of \$168,600.00. It was carrying as an asset on its books \$75,000.00 as a premium on the capital stock of its subsidiary corporation, the Washington-Alaska Bank of Washington, which said asset had no existence whatever and was purely imaginary and of no value; said Fairbanks Banking Company, a corporation, further had on said April 12th, 1910, carried as an asset at their face value, loans and discounts which were past due, were worthless, and have not yet been paid, and cannot be collected, amounting to \$118,250.47, and was also still carrying on its books as an asset of \$341,949.00 the capital stock of said Gold Bar Lumber Company, which originally had been and still was fraudulently over-valued by a sum in excess of \$93,881.11. That said dividend



amounting to the sum of \$33,720.00 was wrongfully, unlawfully and fraudulently declared and paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Sheppard, Ray Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson and James W. Hill, *constitution* its said Board of Directors, and of the defendant L. N. Jesson, its second vice-president and a member of its executive committee, and R. C. Wood, its general manager, out of, by and with the funds and money of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of or with the surplus, earnings, undivided profits of the said Fairbanks Banking Company, a corporation. That on said date of April 12th, 1910, the said Fairbanks Banking Company, a corporation, owed to depositors the sum of \$960,689.79. [28]

(XXVIII)

In the month of May, 1910, and shortly prior to the 12th day of May, 1910, the said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of the said Fairbanks Banking Company, a corporation, wrongfully sold and transferred to the defendants R. C. Wood and John L. McGinn, the entire stock of the said First National Bank, for the *same* sum of \$125,000.00 which the said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank, of Washington, had paid therefor on or [29] about

May 12th, 1909. That said sale and said transfer of said stock in said First National Bank to the defendants R. C. Wood and John L. McGinn, was claimed to have been made under and pursuant to an option claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but said option, if it ever in fact existed as claimed, was entered into without consideration, and was void. Said entire capital stock in said First National Bank was carried by said Fairbanks Banking Company, a corporation, for an entire year without any interest or profit paid to or received by said Fairbanks Banking Company, a corporation, and solely for the use, benefit and profit of said defendants R. C. Wood and John L. McGinn, all of which was done, suffered and permitted by and with the knowledge, consent and approval of all of the then directors and officers of the said Fairbanks Banking Company, a corporation, by which act alone the said Fairbanks Banking Company, a corporation, was damaged in a large sum of money, to wit, in a sum in excess of Twenty-five Thousand Dollars.

(XXIX)

Immediately, or very shortly after the said John L. McGinn and the said R. C. Wood so purchased and acquired said stock in said First National Bank, and on May 12th, 1910, said R. C. Wood resigned as, and ceased to be a director of said Fairbanks Banking Company, a corporation, and said John L. McGinn resigned as and ceased to be a director and vice-president of said Fairbanks Banking Company, a

corporation. At the time and long prior to their said resignations, the said R. C. Wood and John L. McGinn had full and complete knowledge and means of knowledge of the grossly insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they furthermore knew that the said E. T. Barnette had at that time not yet withdrawn his alleged special deposit of \$200,000.00, and the said R. C. Wood and [29a] John L. McGinn then and there knew that said E. T. Barnette was likewise aware of the said insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they, the defendants Wood and McGinn, also knew that said E. T. Barnette could and would shortly withdraw in cash the whole of said alleged special deposit of \$200,000.00, and which said E. T. Barnette actually did withdraw within sixty days after May 12th, 1910, thereby preferring himself to the extent of \$200,000.00 as an alleged creditor of said insolvent Fairbanks Banking Company, a corporation, all of which was done with the knowledge, consent and approval of the then Directors and officers of the said Fairbanks Banking Company, a corporation.

(XXX)

On the first day of October, 1910, the said Fairbanks Banking Company, a corporation, acting through its then Board of Directors, caused the Washington-Alaska Bank of Washington to be consolidated with the Fairbanks Banking Company, a corporation, by having and causing the said Washington-Alaska Bank of Washington to turn over, deliver and transfer to the said Fairbanks Banking

Company, a corporation, all of its assets, and the said Fairbanks Banking Company, a corporation, thereupon assumed all of the liabilities of said Washington-Alaska Bank of Washington, including amounts due to depositors amounting to \$947,800.29. Although said Washington-Alaska Bank of Washington had apparent undivided profits of \$4658.92 on and prior to the time of said consolidation, said Washington-Alaska Bank of Washington on said date had no undivided profits on hand, but in fact its capital stock of \$150,000.00 was seriously impaired in this: On said first day of October, 1910, said Washington-Alaska Bank of Washington had loans and discounts carried at their face value of \$100,704.98, which were then and there past due, and were and still are bad, worthless and uncollectible, and have not yet been paid, all of which was then and there known to the then directors and officers of said Fairbanks [29b] Banking Company, a corporation, or by the exercise of ordinary care might have been known. After said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at said city of Fairbanks as formerly, but under the name of Washington-Alaska Bank, and said Washington-Alaska Bank and its then Board of Directors at all times after October 1st, 1910, wrongfully, fraudulently and without right, carried on the books of said Washington-Alaska Bank as a book asset the item "Premium Washington-Alaska Bank Stock, \$75,000.00," which said asset had no existence whatever, but in fact was purely imaginary, false and fictitious.



## (XXXI)

Although said Fairbanks Banking Company, a corporation, was at all times insolvent and in a failing condition, as herein alleged, said Fairbanks Banking Company, a corporation, (but under the name of the Washington-Alaska Bank after the first day of October, 1910), continued actively in business as a bank, and received deposits from the public generally until and including January 4th, 1911, and thereafter on January 5th, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, plaintiffs, vs. Washington-Alaska Bank, a corporation, defendant," commenced in said district court, Territory of Alaska, fourth division, an order was duly given and made appointing F. W. Hawkins receiver of said Washington-Alaska Bank, who thereupon duly qualified and entered upon his duties as such receiver. Thereafter, on the 6th day of January, 1911, said District Court by an order duly given and made appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and said Mack thereupon duly qualified and entered upon his duties as such receiver; and thereafter said Hawkins and Mack continued to be and act as receivers of said Washington-Alaska Bank until the 12th day of May, 1911, when said Hawkins and Mack resigned as such receivers, and thereupon on said date last named said District Court, by an order duly given and made and entered, [29c] appointed the plaintiff, F. G. Noyes, receiver of said Washington-Alaska Bank, and said F. G. Noyes thereupon duly qualified as such receiver, and ever since has been, and now



is the duly qualified and acting receiver of the said Washington-Alaska Bank, and as such is plaintiff in this suit.

(XXXII)

On the date and at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13, consisting of amounts due to depositors, other than banks, \$921,357.56, and amounts due to banks in excess of \$115,938.77, and the assets of said Washington-Alaska Bank were, and still are, by reason of the wrongful, fraudulent and negligent acts of the defendants herein alleged, insufficient to pay said liabilities in full.

(XXXIII)

The receivers of said Washington-Alaska Bank have collected and reduced to cash as far as possible the assets of said Washington-Alaska Bank, and there has been declared and paid upon the acknowledged or proven liabilities of said bank, dividends aggregating fifty per cent, save and except that \$12,627.70 of said dividends have either not been called for, or have been withheld by order of court, and save also that the Dexter Horton National Bank of Seattle, to whom is due the sum of \$128,899.37, and other creditors to the amount of \$4,132.63 have not proven their claims, or yet demanded their dividends.

(XXXIV)

At the time said Washington-Alaska Bank ceased business on January 4th, 1911, there was due and owing from said Washington-Alaska Bank, to the said Dexter Horton National Bank of Seattle, the

sum of \$128,899.37, and the said Dexter Horton National Bank had in its possession all of the said capital stock of the said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank as hereinbefore alleged, and said Dexter Horton National Bank claimed to hold said stock in said Gold Bar Lumber Company as collateral security to secure the payment to said Dexter Horton National [29d] Bank of said sum of \$128,899.37, and said Dexter-Horton National Bank still has possession of said stock in said Gold Bar Lumber Company, and still so claims to hold the same as such collateral security.

(XXXV)

From the time of the organization of said Fairbanks Banking Company, a corporation, at all times the sum of \$341,949.00 of the assets of said Fairbanks Banking Company, a corporation, have been invested in the said stock of the said Gold Bar Lumber Company, and said stock constituted a book asset of that amount when said Washington-Alaska Bank ceased business, and is still subject to the claims made by said Dexter-Horton National Bank of Seattle, an asset of said Washington-Alaska Bank. Said F. G. Noyes, as receiver of the said Washington-Alaska Bank, plaintiff, owing to the fact that said stock in said Gold Bar Lumber Company is so held and claimed by said Dexter-Horton National Bank, has been and now is unable to sell or dispose of the same, and although he has made diligent attempt has been unable to obtain for said stock in said Gold Bar Lumber Company any offer in excess of the claim of said Dexter-Horton National Bank, or any offer whatsoever; and plaintiff alleges that if said stock in

said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank, has any value in excess of the claim of said Dexter-Horton National Bank, it is of a wholly uncertain and speculative character.

(XXXVI)

The only remaining assets of said Washington-Alaska Bank in said receiver's hands, out of which any further dividends to depositors and other creditors can be paid, are bills, and notes and overdrafts due from various persons and corporations, of the face value of \$266,020.31; real estate and furniture and fixtures carried on the books of said corporation at \$40,726.13; stock in the Chena Milling, Smelting & Refining Company of the par value of \$1000.00, and a claim against the Scandinavian-American Bank of Seattle for \$17,886.05, in litigation. That said bills, notes and [29e] overdrafts, although of the face value of \$266,020.31, are not of that value. The whole amount thereof are past due, and not to exceed \$80,000.00 thereof are owing from solvent debtors or can be collected, and the remainder thereof are bad, worthless and uncollectible. Said real estate, furniture and fixtures are not of the actual cash or market value of more than \$20,000.00, and said stock in said Chena Milling, Smelting & Refining Company has no actual or market value.

(XXXVII)

Plaintiff therefore does hereby allege that at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, the assets of said Washington-Alaska Bank were, and they still are, by reason of the wrongful, fraudulent and negligent acts and conduct of the defendants herein alleged, insufficient in

amount to pay the debts and liabilities thereof, in full, and that the sum which will be required in addition to said assets, in order to pay said liabilities in full, will and does amount to more than Four Hundred Thousand Dollars.

(XXXVIII)

The said wrongful, unlawful and fraudulent and negligent acts and conduct of the defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company), as hereinbefore alleged, are and were the sole and proximate causes of the said assets of said Washington-Alaska Bank being so insufficient, as aforesaid, to pay its liabilities in full, and by reason of said wrongful, unlawful and fraudulent and negligent acts and conduct of said defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company), said Washington-Alaska Bank suffered loss and damage in excess of the sum of Four Hundred Thousand Dollars, the exact amount of which cannot be determined except by an accounting to be had in a court of equity.

(XXXIX)

On account of the various terms of office of said defendant, as directors and officers of said Washington-Alaska Bank not being [29f] identical, but beginning and ending at many and divers different dates, it would, if plaintiff herein should pursue any remedy at law he might have in the premises, cause a multicPLICITY of suits and actions, and cause large and useless expense, and furthermore, the trial and examination into the matters and things herein



alleged will involve the examination into many complicated accounts, which can only properly be done in a court of equity. Therefore plaintiff alleges that he has in the premises no plain, speedy or adequate remedy at law, and therefore invokes the aid of a court of equity, wherein only matters of this kind are properly cognizable and relievable.

WHEREFORE, plaintiff prays for judgment of this Court, that an accounting be had and taken by this Court, or by a master or referee, appointed by this Court and under its supervision, to determine the amount due to plaintiff for the wrongful, fraudulent and negligent acts and conduct of the defendants as directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company) herein alleged, and that plaintiff have judgment entered against defendants, and each of them, for the amount found due from them respectively upon such accounting.

PLAINTIFF ALSO PRAYS for all other and further relief to which he may be in equity entitled, including costs.

O. L. RIDER,

Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn deposes and says: I am the plaintiff named in the foregoing amendment to complaint; I have read said amendments to complaint, know the contents thereof, and believe the same to be true.

F. G. NOYES.



Subscribed and sworn to before me this 23d day of May, A. D. 1913.

[Notarial Seal]

L. D. BENNETT

Notary Public in and for the Territory of Alaska,  
Residing at Fairbanks. [29g]

Due and legal service of copy of the foregoing amendments to complaint is hereby accepted for the defendants J. A. Jesson, George Preston, E. R. Peoples, John A. Clark, Ray Brumbaugh and James W. Hill, this — day of May, 1913.

McGOWAN & CLARK,

Attorney for Said Defendants.

Due and legal service of copy of the foregoing amendments to complaint is hereby accepted for the defendants R. C. Wood, J. A. Healey and John L. McGinn, this 23d day of May, 1913.

A. R. HEILIG,

Attorney for Said Defendants. [29h]

### **Exhibit One.**

AGREEMENT AND ASSIGNMENT BETWEEN  
J. W. HILL, E. T. BARNETTE AND R. C.  
WOOD TO AND WITH THE FAIRBANKS  
BANKING COMPANY. [29i]

### **AGREEMENT.**

This Indenture, made and entered into this 16th day of March, 1908, by and between E. T. Barnette, James W. Hill and R. C. Wood, co-partners doing business under the firm name and style of the Fairbanks Banking Company of Fairbanks, Alaska, the parties of the first part, and the Fairbanks Banking Company, a corporation organized, created and exist-

ing under and by virtue of the laws of the state of Nevada, party of the second part,

WITNESSETH: That, whereas, the parties of the first part as co-partners since the month of May, 1905, have been engaged in carrying on and conducting a general banking business in the town of Fairbanks, Alaska, under the name and style of the Fairbanks Banking Company, and is possessed at this time as a part of the property and business of said co-partnership—

(a) Stock in the following corporations, namely:—

1. Four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation organized, created and existing under and by virtue of the laws of the State of Washington. The certificates of which were issued August the 14th, 1906 as follows:—Certificate No. 11 to R. C. Wood, 24 shares; Certificate No. 12 E. T. Barnette, 48 shares; Certificate No. 13 James W. Hill, 24 shares. Said Certificates of Stock now being in the possession of the Scandinavian-American Bank of Seattle, Washington and enjoined by Seattle Court from delivering. Said stock being of the value of \$341,949.00 as per statement hereto attached marked Exhibit “A.”
  2. The entire stock of the Tanana Publishing Company a corporation organized and existing under and by virtue [29j] of the laws of the state of Washington. Said stock being of the agreed value of \$12,000.00
- (b) of the following real estate:—

1. Bank building and lot of the agreed  
value of .....\$19,423.58
2. Warehouse of agreed value of..... 3,360.00
3. Building and lot town of Cleary where  
a branch bank is being conducted;  
the agreed value of..... 1,695.50
4. Assay building and plant, agreed value  
of ..... 2,860.57

(c) Have outstanding loans and discounts of the value of 353,842.54.

All of which are evidenced by notes of the parties owing the same. A scheduled statement specifying the name of the debtor and the face of the note is hereto attached and marked Exhibit "B." Some of which said notes are secured by mortgages upon real or personal property; and

(d) Overdrafts as appear upon the books of the parties of the first part, of the agreed value of .....8,326.75  
as per list attached marked Exhibit "C."

(e) Due from Banks as follows:—

Bank of B. N. A.....	2236.66
Dome City Bank.....	714.42
National Park Bank.....	790.61
Seattle National Bank.....	3951.00
Valdez Bank & Mercantile Co.	247.78
Dexter Horton & Co.....	1240.40.
Amounting to the sum of....	9,180.87

(f) Cash on hand amounting  
to .....35,774.38

(g) Gold-dust of the value  
of ..... 2,737.49

(h) Sundry other credits of  
the parties of the first  
part to the agreed  
value of ..... 637.34

Making the total resources of  
the Bank as agreed upon  
by the parties hereto of  
the value of..... 790,940.31

and,

Whereas, the liabilities of said parties of the first  
part are as follows:

1. Script now in circulation..... 64,737.00  
2. Deposits—Ordinary .....356,677.92  
3. Deposits—Savings ..... 63,238.22

[29k]

4. Due to Banks as follows:—

Alaska Bank & Safe Deposit Co.....	273.44
Ladd & Tilton.....	355.96
Corn Exchange National Bank.....	7659.38
First National Bank, San Francisco.....	7357.09
Scandinavian American Bank.....	12713.93
National Bank of Commerce.....	12.81
Cleary Branch .....	25919.56

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Making a total liability.....538940.31

And,

Whereas, the party of the second part was incorpo-  
rated for the express purpose of taking over all of  
the property, real, personal and mixed of the parties  
of the first part, their business and good will (save  
and except the sum of \$200,000.00 the original capital  
of the parties of the first part, the same being the

personal property of E. T. Barnette) to the valuation thereon placed, as heretofore set forth. And in consideration thereof was to assume and pay all the liabilities of the parties of the first part, as hereinbefore set forth; and

Whereas, E. T. Barnette of the parties of the first part has personally belonging to him of the assets of the parties of the first part the sum of \$200,000.00, being the amount of the capital stock of the parties of the first part contributed to said co-partnership by the said E. T. Barnette; and it has been agreed that said sum of \$200,000.00 shall be repaid by the party of the second part to the said E. T. Barnette one year from the release of the said Gold Bar Stock from the injunction now in force against it; and that said E. T. Barnette during said time shall leave said amount upon deposit without interest with the party of the second part, provided, however, that in the event the party of the second part shall sell said Gold Bar Stock for cash, then the said sum of \$200,000.00 immediately upon receipt of said cash by the party of the second part shall become immediately [291] due and payable; and in the event that said Gold Bar Stock is not sold for cash, but part for cash and part on time, then the said E. T. Barnette shall be entitled to receive such a proportion of said sum of \$200,000.00 as the cash paid upon the purchase price of said Gold Bar Stock shall bear to the entire purchase price, And,

Whereas, owing to a certain action now pending in the Superior Court of the State of Washington, for King County, entitled J. H. Causten, Plaintiff, vs.



E. T. Barnette, Defendant, in which said action the said Causten is seeking to be declared the owner of a certain part and portion of the capital stock of the Gold Bar Lumber Company issued in the name of E. T. Barnette, as heretofore set forth; and

Whereas, said litigation is now undetermined, and the right of the said Causten to any part or portion of said stock of the Gold Bar Lumber Company is undetermined, and it is the desire of the said E. T. Barnette, and the party of the second part, that the said E. T. Barnette shall indemnify the party of the second part for any loss that may be sustained by reason of any adverse decision in the value of the Gold Bar Stock; and said E. T. Barnette has heretofore agreed that the sum of \$200,000.00 before mentioned shall also be security to the party of the second part under the conditions and terms set forth on page three of this agreement, against any adverse decision of the Court in Causten vs. Barnette suit, as such decision may decrease the value of the Gold Bar property as accepted by the party of the second part; and

Whereas, the party of the second part has agreed with the parties of the first part to issue to them stock for the amount that the assets of said company shall exceed its liabilities less the sum of \$200,000.00, and the parties of the first part have agreed to accept the same, [29m—33]

Now, therefore, for the purpose of carrying out the terms and agreements between the parties hereto, as hereinbefore set forth, this Indenture,

Witnesseth: That the parties of the first part for

and in consideration of the foregoing and of other good and valuable consideration to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents assign, transfer and set over unto the party of the second part, four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation created and existing under and by virtue of the laws of the State of Washington, and agree to transfer and deliver to the party of the second part the Certificates of stock now owned by them as hereinbefore set forth as soon as they obtain possession of same; and do hereby assign, transfer and set over unto the party of the second part all of their right, title and interest in and to all and singular the property, real, personal and mixed of said Gold Bar Lumber Company situated at Gold Bar, Washington, or wheresoever situated according to the statements hereto attached.

And the said E. T. Barnette personally agrees to and with the party of the second part that he will save the party of the second part harmless as to any decrease in the value of said Gold Bar Lumber Company Stock on account of the litigation now pending in the Court of Seattle entitled Causten vs. Barnette, and that the sum of \$200,000.00 shall remain upon deposit with the Fairbanks Banking Company upon the terms and conditions heretofore set forth on page 3 of this agreement, and be security to said party of the second part against any adverse decision of the court in said suit which may decrease the value of the Gold Bar property as

accepted by the party of the second part.

The parties of the first part also hereby assign, transfer [34] and set over unto the party of the second part all of their stock in and to the Tanana Publishing Company, and the property that belongs to said corporation as heretofore agreed between the parties. It being understood that the stock of paper now in the possession of the parties of the first part shall remain and be their property.

The parties of the first part hereby assign, transfer and set over unto the party of the second part all their right, title and interest in and to the Bank Building and the lot upon which the same is situated, the warehouse situated thereon, the building and lot in the town of Cleary, and all the right, title and interest in and to the assay building and plant situated in Fairbanks, Alaska, and hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby assign, transfer and set over unto the party of the second part all and singular the personal property, fixtures, vault, safe deposit boxes, and stock in trade, apparatus and effects used in connection with the business of said bank, and the business and goodwill of the parties of the first part to the party of the second part, and to its assigns forever.

The parties of the first part hereby assign, transfer and set over unto the party of the second part

all of their outstanding loans and discounts as the same appear in the scheduled statement hereto attached marked Exhibit "A," and the notes of the debtors given to evidence the amount of such loans and discounts, together with all mortgages upon real or personal property that have been given to secure the same, and hereby agree that they will transfer to the party of the second part by proper indorsement all of said notes and mortgages and forthwith deliver the same into the [35] possession of the party of the second part.

Also all of the right, title and interest of the parties of the first part in and to all overdrafts as the same appear upon the list hereto attached marked Exhibit "C," and all moneys due and owing the parties of the first part from the Banks mentioned in page 2 of this agreement; and likewise hereby transfer, assign and set over to the party of the second part all cash on hand now belonging to the parties of the first part; all gold-dust in their possession as the same appears on page 2 of this agreement, and all the property of the parties of the first part, real, personal or mixed that has this day been turned over to the party of the second part, and of which the party of the second part is now in the possession of.

The intention of this agreement being to place the party of the second part in the shoes of the parties of the first part as to the Banking Business of the Fairbanks Banking Company and as to all properties heretofore mentioned or specified.

To have and to hold unto the party of the second



part, its successors and assigns, forever.

And the parties of the first part hereby authorize and empower the party of the second part, its successors and assigns, to perform all acts that may be necessary to protect and preserve the properties hereby assigned; and to bring all necessary actions at the cost of the party of the second part to enforce the collection thereof, or to protect the same.

And the said party of the second part in consideration of the foregoing hereby covenant and agree to and with the parties of the first part that it will in due course pay all the debts and discharge all the liabilities of the said parties of the first part as the same are specified on [36] pages 2 and 3 of this agreement, and will at all times hereafter effectually keep indemnified the parties of the first part their executors and administrators and their assets and effects against all such debts and liabilities and all actions, proceedings, costs and expenses in respect thereto, and all costs and expenses by reason of any action or proceeding which may be instituted or taken by said party of the second part by virtue of the power or authority hereinbefore contained, or of anything relating thereto.

The party of the second part agrees to pay to E. T. Barnette the sum of \$200,000.00 as hereinbefore on page three of this agreement specified, save and except, however, that if a decision adverse to the said E. T. Barnette shall be rendered in said cause of Causten vs. Barnette and by reason thereof the value of the Gold Bar Stock shall be depreciated by reason of Causten being declared the owner of a part or



portion thereof, then, the amount of such depreciation shall be deducted from said sum of Two Hundred Thousand Dollars.

The party of the second part hereby agrees that it will issue to the parties of the first part paid up stock to the amount they shall be entitled to under the terms of this agreement.

This agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof the parties of the first part have hereunto set their hands and seals, and the party of the second part by resolution of its Board of Directors as hereunto by its President and Secretary set its corporate name and seal this the 16th day of March, 1908. [37]

E. T. BARNETTE. (Seal)

JAMES W. HILL. (Seal)

R. C. WOOD. (Seal)

FAIRBANKS BANKING COMPANY,

By E. T. BARNETTE,

President.

Signed, sealed and delivered in the presence of:

JOHN L. MCGINN.

H. F. YEAGER.

(Seal)

Attest: B. R. DUSENBURY,

Secretary.

United States of America,  
Territory of Alaska,—ss.

This is to certify that on this the 16th day of March, 1908, personally appeared, E. T. Barnette, James W. Hill and R. C. Wood to me personally

known to be the individuals described in and whose signatures are subscribed to the foregoing instrument and they acknowledged to me individually and not one for the other that they signed, sealed and delivered the said instrument freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal]

JOHN L. MCGINN,

Notary Public for Alaska. [38]

United States of America,  
Territory of Alaska,—ss.

This is to certify that on this the 16th day of March, 1908, personally appeared before me E. T. Barnette and B. R. Dusenbury to me personally known and known to me to be the president and secretary, respectively of the Fairbanks Banking Company, the corporation named in the foregoing instrument as the party of the second part, and the said president executed the said instrument, and acknowledged to me that he signed, sealed and delivered the same by authority of the Board of Directors of said corporation, for the uses and purposes therein mentioned, and the secretary affixed the seal of said corporation thereto.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal]

JOHN L. MCGINN,

Notary Public for Alaska. [39]

## EXHIBIT "B."

## LOANS AND DISCOUNTS.

2020	Altman, Max.....	\$2500.00
1236	Anderson Brothers.....	1165.00
1657	Asheim, Sam.....	618.58
2095	Armstrong, et al.....	11468.90
2093	“ “ .....	13785.80
2094	“ “ .....	3931.01
1849	Atchison, John.....	650.00
1975	Barrett, William.....	16855.85
1225	“ “ .....	16476.18
1435	Brazeau, Ben.....	400.00
1958	Balthuff & Sickinger.....	300.00
1334	Badger, H. M.....	194.00
1931	Boker, J. E.....	150.00
1523	Burke & Deal.....	100.00
1255	Barthel Brewing Co.....	14000.00
1642	“ “ “ .....	3200.00
1587	Berger, D. H.....	550.00
1110	Balzimer & McRae.....	800.00
1991	Bechtol, John J.....	132.82
1795	Burnes, J. E. & Baird, J. F.....	47.00
1333	Badger, H. M.....	735.00
2036	Courtemanche, Dave.....	500.00
1239	Cribb, Harry.....	1200.00
1240	“ “ .....	4000.00
2102	Cook & Co.....	13326.62
2110	City Warrant.....	40.00
2111	“ “ .....	52.70

1613	Claypool, C. E.....	1744.90
1943	Cleary, Frank.....	500.00
1696	Charles, P. G.....	103.08
2053	Collins, John.....	300.00
2054	Craig, W. A.....	2200.00
2049	Campbell, E. C.....	200.00
1403	Clark et al.....	800.00
1495	“ “ .....	250.00
1528	“ “ .....	1000.00
2088	Cook, H.....	14392.90
2087	“ “ .....	3074.49
2086	“ “ .....	916.49
1786	Claypool, C. E.....	150.00
1888	Clum, John P.....	250.00
1699	Colbert, L. D.....	96.87
280	Casey & Saylor.....	40.00
1521	Charles & Bernard.....	200.00
1163	Cathcart, Edgar ....	410.00
2085	Cook, H.....	1965.50
645	Cloes, H. G.....	158.50
2116	City Warrant.....	387.50
2117	“ “ .....	35.00
1393	Doring, H.....	609.52
1254	Draper, Charles.....	75.00
1259	Evans & Porter.....	171.35
1858	Fairburn, L. A.....	125.00
[40]		
1688	Fairburn et al.....	1700.00
1861	Fairburn “ .....	300.00

1544	Frost, Jas.....	750.00
1733	Frost, Jas.....	100.00
1891	Fairbanks Commission House.....	33.95
1937	Floradora... ..	338.37
1530	Fairbanks Commission House....	2000.00
1469	“ “ “ ....	212.50
1306	Gilcher, William.....	495.10
1994	Grant, H. G.....	7.70
1591	Gelling & Bechtolt.....	1050.00
1753	Gaustad, O. P. et al.....	175.00
2059	Green, V. O.....	50.00
1952	“ “ .....	504.25
1939	“ “ .....	250.00
1926	“ “ .....	2332.34
2048	“ “ .....	50.00
1855	Gardiner, H. E.....	2824.00
892	Gregg, Geo.....	59.30
1721	Green, W. F.....	1332.74
1854	Gallagher, Phil.....	150.00
1329	Guenther, O. J.....	202.00
1808	Hutchinson, Geo.....	300.00
1836	Hall, Frank.....	4000.00
1745	Hannum & Hamilton.....	1500.00
1155	Hudson, F. P.....	125.00
1853	Hall, F. H.....	75.00
1601	Howe, E. D.....	157.25
1274	“ “ .....	150.00
1174	“ “ .....	150.00
2005	Hilliard, J. J., Jonas, D. H.....	2000.00
2017	Heilig & Tozier.....	538.71



2055.	Houlihan, J. C.....	89.00
2006	Ingels, F. B.....	2000.00
1900	Johnson, A. J.....	200.00
1497	Johnson, Chas. et al.....	1000.00
1604	James, B. T. “ .....	2000.00
2069	Jonas & Brown.....	2000.00
1921	Johnstone, J. I.....	450.00
1548	James, William.....	4301.00
2119	Jonas & Brown.....	300.00
2114	Johnson, John C.....	450.00
1635	Keevey et al.....	730.00
2022	Kellogg, Geo.....	625.00
1489	Karstens, H. P.....	100.00
1510	“ “ .....	100.00
1990	Lewis, L. T.....	160.00
1632	Larsen, Alex.....	797.71
552	Long et al.....	50.00
1616	Lindsay et al.....	200.00
1382	Longdon, W. C. et al.....	200.00
1911	Lund et al.....	100.00
648	Long et al.....	505.00
1846	Maltby, Alfred.....	88.75
1430	McPhee & Sheppard.....	7000.00
2113	McRae, D. D.....	50.00
2104	MacCormack, J. W., Agt.....	208.40
1683	Meehan & Kelly.....	450.00
2041	Moran, B. H.....	500.00
2073	McIlroy, S. D.....	250.00

1653	McDowell, J. E.....	200.00
2032	McInroy, Chas. A.....	344.18
2089	McGinn & Sullivan.....	3931.01
2090	“ “ .....	28180.00
2057	McMullen, M. H.....	2000.00
1701	MacCormack, J. W.....	300.00
1844	“ “ .....	45.00
1879	Markinson, et al.....	373.50
675	Morency, Al....	800.00
1907	McNeil, M.....	500.00
1421	McCauley, C. D.....	350.00
2016	McGowan, Thos.....	1000.00
1585	McNeer, A. H.....	1525.00
1988	Mac Arthur, M. A. J.....	2400.00
2076	Moe & Schroeder.....	230.00
2099	News Publishing Co.....	262.50
1837	Nelson & Peterson.....	10000.00
2027	News Publishing Co.....	509.75
2116	“ “ “ .....	442.79
1946	Overgaard et al.....	275.00
1540	Propes W. H. et al.....	261.50
1731	Petree, Dave.....	5500.00
1957	“ “ .....	2800.00
1356	Pres. Church.....	1050.00
774	Porter, W. H.....	2070.33
2003	Rose & Kellum.....	750.00
2115	Royal Hotel.....	120.00
1593	Rutherford & Widman.....	2500.00
1878	Rusk, E. M.....	250.00
1995	Roth et al.....	1500.00
2101	Roy, H. T.....	75.00
2091	Ridenour, J. C.....	11236.90

2092	“ “ . . . . .	1933.53
2097	Royal Hotel. . . . .	180.00
656	Roberts et al. . . . .	50.00
2067	Red Cross Drug Store. . . . .	3350.00
1376	Schaupp, Fred. . . . .	4420.00
1606	“ “ . . . . .	438.00
2103	“ “ . . . . .	1245.81
1912	Slippern, J. A. . . . .	925.00
1525	Spencer et al. . . . .	1891.44
1260	Sullivan, M. L. . . . .	4500.00
2016	Smith, John C. . . . .	1000.00
1887	Sullivan, Jno. E. et al. . . . .	250.00
506	Sorensen, Bros. . . . .	450.00
1996	Str. White Seal. . . . .	43.69
1940	St. George, H. E. . . . .	400.00
1984	Smith, Jos. H. . . . .	2000.00
1947	“ “ . . . . .	3000.00
2064	Shephard, Robt. . . . .	5056.57
1692	Scott & Spencer. . . . .	2000.00
1067	Sullivan, M. J. . . . .	300.00
1311	Stein, Abe. . . . .	700.00
1304	Sorensen, Rufus. . . . .	2824.00
2074	Shinkle, W. A. . . . .	1000.00
1899	Tanana Electric Co. . . . .	2600.00
2080	“ “ “ . . . . .	25397.38
1380	Thompson et al. . . . .	250.00
1583	Truitt, D. W. . . . .	1000.00
358	Timmerman, C. . . . .	105.00
1442	Thompson, W. F. . . . .	358.80
1686	Tharp, Rusk & Smith. . . . .	2313.45
[42]		
2007	Tharp, Rusk & Smith. . . . .	2500.00
2018	“ “ “ . . . . .	1000.00

2008	Tharp & Rusk.....	2000.00
1787	Vedin, Gus.....	1587.00
2035	Witte Pascal et al.....	545.00
2106	Webb, W. A.....	200.00
2079	Williams, A. J.....	600.00
1063	Wickersham, Edgar.....	560.00
1993	Waters, Emile.....	40.00
1054	Morgan, J. et al.....	200.00
1820	Wilson, E. M. et al.....	100.00
1821	“ “ .....	100.00
1779	Wile, L. & Boss, A.....	400.00
1922	Warren, Minnie.....	86.50
1778	“ “ .....	180.00
1629	Williams, E. & Dora.....	3000.00
2012	Young, S. Hall.....	575.00
1391	Zimmerman, J. F. et al.....	900.00
2056	Zuber, Anthony et al.....	650.00
1835	York, J. T.....	100.00
216	“ “ .....	100.00
260	“ “ .....	500.00

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Total.....\$353842.54

### CLEARY BRANCH.

James Coyle & J. A. Grant.....	300.00
Al. Hilty.....	200.00
E. M. Bockfinger & P. A. Wilson.....	300.00
Gunner Nelson & C. Ericson.....	100.00
M. J. McDermott.....	200.00
John Hamilton, A. J. Nordale, John Flygar.....	2820.00

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Total..... \$3920.00

EXHIBIT A.

STATEMENT OF THE GOLD BAR LUMBER CO., OCTOBER 1, 1907.  
RESOURCES.

Camp Equipment	31910.23	
Horses and Wagons	501.06	
Insurance	1686.60	
Lumber	37679.68	
Lighting Equipment	2808.45	
Mill Site	5000.00	
Mill Buildings	23403.58	
Mill Equipment	68665.34	
Northern Bank & Trust Co.	2080.22	
Office Fur. & Fixt.	545.13	
Real Estate	18400.00	
Timber Lands	204956.05	
Valley Supply Co., Stock	9574.16	
Water System	10313.82	
Accounts Receivable	18806.96	
		<hr/>
Total Resources	436331.28	

LIABILITIES

Bills Payable	68112.82	
Wages due	6062.47	
Accounts payable	3036.81	
		<hr/>
Total Liabilities	77212.10	

NET RESOURCES 359119.18

GAINS

Cook Camp	970.28	
Lumber Sales	186738.10	
Light Rents	79.25	
Real Estate	47.32	
Rents	2684.56	
Valley Supply Co., Stock	4574.16	
Water Rents	165.42	
		<hr/>
Total Gains	195259.09	



## LOSSES

Depreciation Camp Equip.	3545.58	
“ Horses and Wagons	55.67	
“ Light Equipment	312.05	
“ Mill Buildings	2600.39	
“ Mill Equipment	7629.48	
“ Furniture & Fixtures	60.57	
Cruising Account	302.85	
Camp Expense	4804.37	
General Expense	9489.62	
Interest & Discount	5807.22	
Insurance	4382.36	
Labor	125008.96	
Mill Expense	6248.03	
Profit & Loss	4554.93	
Real Estate Repairs	391.28	
Taxes	2619.40	
	<hr/>	
Total Losses	177812.76	
	NET GAIN	17446.33
CAPITAL Stock Oct. 1, 1906	12000.00	
Surplus “ “	329672.85	
	<hr/>	

## [44]

Net Resources Oct. 1, 1906	341672.85
Net Resources Oct. 1, 1907	359119.18
Add increase in value of Timber Lands 1/3	68318.68
	<hr/>
	427,437.86
4/5 interest value	341,949.00

## [45]

STATEMENT OF THE CONDITION OF THE VALLEY SUPPLY CO.,  
Oct. 1, 1907.

## RESOURCES.

Cash	211.30	
Merchandise	11953.90	
Furniture and Fixtures	926.48	
Accounts Receivable	2652.42	
	<hr/>	
Total Resources	15744.10	

LIABILITIES

Accounts payable	6169.94	
Total Liabilities		6169.94

Net Resources Oct. 1, '07		\$9574.16
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PROFITS

Merchandise	5833.46	
P. O. Receipts	266.87	
Interest & Discount	1563.38	
Total profits		7663.71

LOSSES

Expense	220.91	
Rent	800.00	
Labor	3034.02	
Depreciation Fur. & Fixt.	102.94	
Total losses		4157.87

Net Gain		3505.84
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Capital invested June 1, '06		6068.32
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Net Resources Oct, 1, '07		9574.16
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[46]

**Exhibit "B."**

FAIRBANKS BANKING COMPANY.

LIST OF OVERDRAFTS AS MARCH 16,1908.

Asheim S	37.11
Adcock Mrs.	240.06
Barnette E. T.	130.17
Barnette & Yarnell	1162.05
Boarman F. B.	2069.50
Chapman G. H.	5.00
Collins John	7.45
Emberley Isabelle	8.93
Fox James	1.00
Higgins Geo. C.	50.00

Kearney C. J.	735.50
Kennedy D. A.	1.23
Kennedy D. T.	174.00
Matheson & Holmquist	1.25
Merrill G. H.	3.00
Morrison Ronald	578.27
Monarch Association	289.20
MacCormack Edith	14.05
McMullen Ed.	11.00
News Publishing Co.	16.33
Steamer White Seal	9.75
Smith A. T.	52.26
Sigler Chas. T.	31.06
Schilling, G. L.	2621.58
Scott & Spencer	14.04
Sullivan, M. L. Witness	18.25
Wisconsin Group Assn.,	43.75
Worman, C. N.	1.00
	<hr/>
	\$8326.79
	<hr/>

[47]

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. *F. G. Noyes*, Receiver of the Washington-Alaska Bank, Plaintiff, vs. *J. A. Jesson*, et al., Defendants. Amended Complaint. Filed in the District Court, Territory of Alaska, 4th Div. May 23, 1913. C. C. Page, Clerk. By *H. C. Green*, Deputy. [48]

[Title of Court and Cause.]

No. 1756.

**Separate Answer of Defendants R. C. Wood, J. A.  
Healey and John L. McGinn.**

Comes now the defendants R. C. Wood, J. A. Healey and John L. McGinn, and, answering the amended complaint of the plaintiff on file herein, say:

I.

Answering paragraph 3 of said complaint, these defendants—

Deny that E. T. Barnette, R. C. Wood, and James W. Hill circulated or caused to be circulated in the city of Fairbanks or vicinity or elsewhere stock subscription lists subscribing to the capital stock of said corporation, which said stock subscription lists omitting the signatures, were or are in words and figures set forth in paragraph 3 of said amended complaint.

II.

Answering paragraph 4 of said amended complaint the defendants—

Admit that E. T. Barnette signed said subscription list for four hundred and forty (440) shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty (220) shares of said capital stock; but deny that the same was signed or subscribed by the said R. C. Wood for two hundred and twenty (220) shares or any shares. [49]

And deny that said James W. Hill, R. C. Wood and

E. T. Barnette caused said subscription lists to be circulated, or that they circulated the same.

### III.

Answering paragraph 5 of said amended complaint, defendants—

Deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on March 12th, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held upon the 8th day of February, 1908.

Deny that on the 12th day of March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, were elected.

Deny that the said E. T. Barnette named or selected said Board of Directors otherwise than by placing the names of said persons in nomination at the meeting of the subscribers and stockholders held February 8th, 1908.

### IV.

Answering paragraph 6 of said amended complaint these defendants—

Deny that on the 13th day of March, 1908, said Board of Directors authorized the acquisition or purchase of the Fairbanks Banking Company, a partnership, or the assets in business of said Fairbanks Banking Company, a partnership, otherwise than as in the further and separate and affirmative defense of these defendants hereinafter set forth.

Deny, except as in the further and separate an-



swer of these defendants hereinafter set forth, that the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a partnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated March 16th, 1908.

And deny, that a true copy of the same is attached to the [50] amended complaint and marked "Exhibit 1."

### V.

Admit that there was issued to E. T. Barnette two hundred and sixty (260) shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1."

Admit that there was one hundred and thirty (130) shares of the capital stock of said corporation issued to James W. Hill; but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defendants.

Deny that there was ever issued to R. C. Wood one hundred and thirty (130) shares of the capital stock of said Fairbanks Banking Company.

Admit that the assets of said copartnership, enumerated and described in said contract, "Exhibit 1" were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants.

## VI.

Answering paragraph 8 of said amended complaint, these defendants—

Deny that at, or immediately prior to, the transfer of the assets of the Fairbanks Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,067.89 or a less sum than \$341,949.00.

Deny that at the date of said transfer the value of said Gold Bar Lumber Company stock was a sum less than \$248,067.89.00, or was of a less value than the sum of \$341,949.00.

Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased, or grossly fraudulent, or any over valuation of more [51] than \$93,881.11, or any sum whatsoever. And deny that the same or all of it was done or accomplished with the full knowledge, cooperation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnell and John P. Anderson, or of the defendants R. C. Wood, James W. Hill, B. R. Dusenbury and John L. McGinn.

And deny that at said time the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the district of Alaska.

Deny that the business of the Gold Bar Lumber

Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature.

Deny that the capital stock of said Gold Bar Lumber Company was not delivered to said Fairbanks Banking Company, a corporation.

## VII.

Answering paragraph 9 of said amended complaint, these defendants—

Deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation.

Deny that of the notes so sold or transferred to said corporation a large amount were then past due, worthless, or uncollectible. And deny that the amount of past due, worthless and uncollectible paper was a sum in excess of \$53,000.00, or any sum; and deny that the same are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph 9 of said amended complaint were worthless or uncollectible, or that the same are worthless and uncollectible, *or that the same are worthless and uncollectible.*

Deny that it was then and there well known to said defendants directors or officers aforesaid, or by each of them, or, by the exercise of ordinary or great care might have been so known to them, or each or any of them, that the said notes listed in said paragraph 9 of said amended complaint, were at the time that the [52] same were accepted or transferred to said Fairbanks Banking Company, corporation, past due or worthless or without substantial value.

## VIII.

Answering paragraph 10 of said amended complaint, these defendants—

Deny that for the 1502 shares of the capital stock of said corporation issued on March 14, 1908, the same were all paid for by promissory notes, but allege that some were paid for in cash.

Deny that a large amount of said notes were or still are worthless or uncollectible, or that the same have never been paid.

And deny that the amount of said worthless and uncollectible notes is of the face value of \$22,982,33, or any other sum.

## IX.

Answering paragraph 11 of said amended complaint, these defendants—

Deny that there was an issued capital stock of \$202,200, or a greater sum than \$189,200.

Deny that with no other assets than those of the Fairbanks Banking Company, a copartnership, as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200, the Fairbanks Banking Company, a corporation, on March 16, 1908, commenced business as a bank.

Deny that the amounts and the assets set forth in said paragraph 11, constituted all of the assets of said Fairbanks Banking Company, a corporation.

Deny that the sum of \$200,000 belonging to E. T. Barnette was an "alleged" special deposit, and deny that the same was not in fact deposited by the said E. T. Barnette.

## X.

Answering paragraph 12 of said amended complaint, these defendants—

Deny that on March 16, 1908, when said Fairbanks Banking Company, a corporation, commenced business, that said corporation [53] was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts, but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations.

Deny that knowledge of the actual insolvency of said bank was then known to the directors or officers of said institution hereinbefore mentioned, or, by the exercise of great, ordinary, or other care might have been known.

Admit that said bank on the 16th day of March, 1908, was upon a “scrip” basis, but allege that all the other banks in the Fairbanks Recording District, and the major portion of the banks throughout the United States was upon the same “scrip” basis owing to the financial “flurry” in existence at that time.

## XI.

Answering paragraph 13 of said amended complaint, these defendants—

Deny that said bank, or the defendants mentioned in the amended complaint, or the officers, directors and employees of said bank, at all times or any times falsely or wrongfully or otherwise represented or held out to the public generally or otherwise that said Fairbanks Banking Company, a corporation, had paid up capital stock of \$300,000.



## XII.

Answering paragraph 14 of said amended complaint, these defendants—

Deny that John L. McGinn was a director of said bank from and including the 13th day of September, 1909 to the 12th day of May, 1910,

Deny that John L. McGinn and R. C. Wood, or either of them, continued to act as directors of said bank subsequent to the 1st day of May, 1910.

## XIII.

Answering paragraph 17 of said amended complaint, these defendants— [54]

Deny that the defendant L. N. Jesson acted as an executive officer of said corporation, or as a member of the executive committee thereof, until the 12th day of September, 1910, or any other time.

## XIV.

Answering paragraph 18 of said amended complaint, these defendants—

Admit that at the meeting of the Board of Directors held March 12th, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered upon his duties thereof, or that he accepted said office or entered upon his duties as cashier prior to the 17th day of April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908; but allege in this connection that upon the 12th day of May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but, at the request of the

Board of Directors, continued to act as cashier until June 29th, 1908.

#### XIV.

Answering paragraph 19 of said amended complaint, these defendants—

Deny that shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the date of surrender and the number of shares surrendered and the names of the parties surrendering or the amount of cash or subscription notes returned thereof, is as is set forth in the list set out in said paragraph 19 in the amended complaint.

Deny that the defendant R. C. Wood ever surrendered any issued capital stock to said Fairbanks Banking Company, a [55] corporation, and deny that he was ever the owner of the same.

Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received, any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor.

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital

stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge, consent, or approval of the defendants or each of them who constituted its Board of Directors or officers, on the dates set forth in said paragraph XIX, or that, by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surrendered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the Board of Directors of said bank, or with the knowledge, consent or approval, of the defendants.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2020 shares of the capital stock of said corporation on the 4th day of March, 1908, or greater amount than 1892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital [56] stock never exceeded 2156 shares, or after the 9th day of November, 1909, never exceeded 1726 shares, these defendants have no knowledge or information sufficient to form a belief,

and therefore deny the same.

Answering paragraph XXI of said amended complaint, the defendants deny each and every allegation, matter, and thing contained therein, save and except as hereinafter set forth in the separate, further, and affirmative defense of these defendants.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70040.10 of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value. Deny that said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or approval of the defendants in said paragraph XXIII mentioned, its then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for said capital stock thereof, a premium or bonus or more than \$100,000.00, or any other sum over and above the then paid-in capital stock of the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more



than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that [57] said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz.: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own Board of Directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Com-



pany, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00 and in this connection these defendants allege that the directors of said Washington-Alaska Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management [58] of the defendant R. C. Wood, otherwise than as has been set forth in the preceding paragraph. Admit that the amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66839.16 to \$57169.76, but deny that said decrease was a net loss of \$9669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets loans and discounts past due without substantial value, or which had not yet been collected or can not be collected, amounting to the

sum of \$76005.35, or another amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00 but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then Board of Directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of \$168,600, a dividend of twenty per centum, amounting to \$33720.00.

Answering paragraph XXVII of said amended complaint, these defendants deny that, on 12 April, 1910, or at or before the time when said dividend mentioned in the preceding paragraph was ordered to be paid, the said Fairbanks Banking Company, a corporation was, or long prior thereto had been, in a grossly insolvent or failing condition. Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus or undivided profits on hand, out of which said [59] dividend could legally be paid, and deny that, at or prior to said date, said Fairbanks Banking Company had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the asset car-

ried by the Fairbanks Banking Company, on its books of \$75000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet been paid, or that cannot be collected in a sum amounting to \$118250.47, or any other sum. Deny that the capital stock of the Gold Bar Lumber Company originally had been, or still was, on said 12 April, 1910, fraudulently overruled by a sum in excess of \$93881.11 or any sum. Deny that said dividend amounting to the sum of \$33-720.00 was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent or approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W. Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson was a member of the executive committee of said corporation), or of R. C. Wood (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks

Banking Company, a corporation, owed to depositors the sum of \$960689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. [60]

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood, and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and John L. McGinn was claimed to have been made under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered unto without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for an entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit, and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was



done, suffered or permitted by and with the knowledge, consent or approval of all *then* then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum, to wit, in a sum in excess of \$25,000.00 or any sum.

Answering paragraph XXIX of said amended complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge, or means of knowledge, of the grossly insolvent and [61] failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Barnette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation, was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw *in case* the whole of said alleged special deposit of two hundred thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form



a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation, these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent, and approval of the then Board of Directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

V.

Answering the allegations of paragraph XXX of said amended complaint, this answering defendant admits the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the manner therein set forth, but alleges that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of [62] his lack of information and belief in the matter, denies that there was owing to said depositors the sum of \$947-800.29.

Further answering the allegations of said paragraph XXX, these answering defendants deny that said Washington-Alaska Bank of Washington had no undivided profits on hand at the time of said consolidation, and avers that, as he is informed and be-

believes and therefore so alleges on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4658.92; that answering defendant is informed and believes, and basing his denial on such information and belief, denies that the capital stock of the said Washington-Alaska Bank of Washington was seriously impaired or impaired in any way, as alleged in said paragraph, denies that said bank had on hand at said time loans and discounts in the sum of \$100704.98, which were bad, worthless, and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; alleges that answering defendant has no information or belief as to whether or not the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington at their face value or at their present worth, and defendant alleges that he has no information or knowledge as to whether or not said notes have been paid, but is informed and believes that a portion of said notes has since been paid, and basing his denial on such information and belief and lack of information, denies that the notes of the face value of \$100707.98, carried by the Washington-Alaska Bank of Washington on its books on the first day of October, 1910, have not been paid; denies that, on the first day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100704.98, carried on the books of the Washington-Alaska Bank of Washington, were worthless, or bad, or uncollectable, or that any

material portion thereof was so worthless, [63] or bad, or uncollectable; admits that, after said consolidation said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and denies that, at all times after the first day of October, 1910, or at any time after said first day of October, 1910, said directors fraudulently and without right, or fraudulently or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock, \$75000.00"; admits that said item was carried on the books as therein set forth, but denies that said asset had no existence whatsoever, or that the same was purely imaginary, false, and fraudulent, or imaginary, or false or fraudulent.

#### VI.

Answering the allegations of paragraph XXI of said amended complaint, this answering defendant admits that, subsequent to the first day of October, 1910, and up to and including the fourth day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but denies that said bank was, during said time, insolvent and in a failing condition or insolvent or in a failing condition, as alleged in said paragraph; admits the other matters and things in said paragraph contained.

#### VII.

Answering the allegations of paragraph XXXII,

this answering defendant avers that he has no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the fourth day of January, 1911, as alleged in said paragraph, but denies that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of this answering defendant, or of the Board of Directors of which this defendant was a member, rendered insufficient to pay said liabilities in full, and denies that the assets of said bank were impaired, injured or rendered insufficient to [64] pay the liabilities of said bank, by reason of any act or thing done by this answering defendant or his codirectors during the time this defendant was a member of said Board of Directors.

#### VIII.

Answering the allegations of paragraph XXXIII of plaintiffs said amended complaint, this answering defendant denies that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admits that there have been paid on the acknowledged and proven liabilities of the bank dividends aggregating fifty per centum, and answering defendant alleges that he has no knowledge or information as to whether or not \$12627.70 of said dividends have either not been called for or have been withheld by order of court; answering defendant is informed and believes and therefore so alleges that a portion of the claim of the Dexter Horton National Bank of Seattle has been paid, and basing his denial on such information and belief, denies that there is due or owing to said Dexter Hor-



ton National Bank of Seattle the sum of \$128899.37, but alleges that he has no knowledge of how much is due to said bank; answering defendant further alleges that he has no information as to whether creditors to the amount of \$4132.62 have failed to prove their claims or have not demanded dividends.

### IX.

Answering the allegations of paragraph XXXIV, this answering defendant admits that, on the fourth day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle a large sum of money, the exact amount of which is to this answering defendant unknown, and admits the remainder of said paragraph.

### X.

Answering the allegations of paragraph XXXV of plaintiff's amended complaint, this answering defendant denies that the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska [65] Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and alleges that he has no information or knowledge as to whether or not F. G. Noyes, as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum whatsoever; so neither admits nor denies said allegation; answering defendant is informed and believes, and basing his denial on such information and belief, denies that the stock of the Gold Bar Lumber Com-



pany has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and denies that any valuation in excess of said sum is wholly uncertain and speculative.

## XI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, this answering defendant alleges that he has no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver other than the Gold Bar Lumber Company stock, as alleged in said paragraph, sufficient to form a belief, and expressly denies that there are not now in the hands of the receiver, and were not in said receiver's hands at the time of the filing of said complaint, other assets than the assets set forth in said paragraph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31 are not of that value, this answering defendant alleges that he has no information or knowledge sufficient to form a belief as to said matters, and basing his denial on such lack of information and belief, denies the same. Denies that only \$80,000.00 thereof, is owing from solvent debtors and can be collected, and denies that the balance thereof [66] is bad, worthless, and uncollectible, or bad, or worthless, or uncollectible. Answering defendant alleges that he has no knowledge as to the actual cash or market value of the real estate, furniture, and fixtures, sufficient to form a

belief in order to enable him to admit or deny the same.

## XII.

Answering the allegations of paragraph XXXVII of plaintiffs said amended complaint, defendant denies the matters and things therein set forth.

## XIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, this answering defendant denies each and every matter and thing therein contained.

## XIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, this answering defendant denies each and every matter and thing therein contained.

And defendants, for a further, separate, and affirmative defense, allege that, on 12 December, 1907, owing to the unusual and continuous withdrawal of funds by the depositors of the Fairbanks Banking Company, a copartnership, brought about by a feeling of unrest in financial circles all over the United States as well as in the Tanana Valley, the said Fairbanks Banking Company, a copartnership, was compelled to close its doors and suspend business. A meeting of the depositors and creditors of said bank was immediately called and, on 14 December, 1907, at the United States courthouse in Fairbanks, Alaska, a large meeting of the depositors and creditors of said bank was held, at which meeting a committee consisting in W. G. Cassels, C. E. Claypool, Dan Ryan, George Preston, and D. H. Jonas,

was elected, by open ballot of the depositors and creditors present, to investigate and examine into the affairs of the said [67] Fairbanks Banking Company and to report back to the meeting of the depositors and creditors to be held on 16 December, 1907. That said committee so selected consisted in men of high standing in this community for honesty, integrity, and good business judgment. That said committee, acting according to instructions, and after having obtained expert accountants, proceeded to examine carefully into the affairs of said bank, and, after examining all the books, vouchers, documents, and other evidences of the affairs of said bank, and after separately scrutinizing all the notes, mortgages, certificates, and other resources of said bank, made a report to the said meeting of depositors on 16 December, 1907, of the resources and liabilities of said bank, and in said report declared and stated that the resources of said bank exceeded its liabilities in the sum of \$288579.73. That said committee reported that the net value of the Gold Bar Lumber Company stock,—a corporation of the State of Washington,—held by the said Fairbanks Banking Company, was the sum of \$341949.00. That, on examining the loans, the same were divided into three classes; class No. 1 being the class which said committee considered as gilt-edged; class No. 2 being the class which said committee considered as perfectly good and class No. 3 being the class that the committee considered might be doubtful, and which said last or doubtful class amounted to the sum of \$66235.44, and which said last or doubtful class was

eliminated and not considered in arriving at the resources of said Fairbanks Banking Company. That the committee, hereinbefore mentioned, was known as the board of trustees of the Fairbanks Banking Company, a copartnership, and continued to act in that capacity until the said Fairbanks Banking Company, a copartnership, was taken over by the corporation.

That, in the fore part of January, 1908, a large number of business, professional, and mining men, representative men of [68] the Fairbanks precinct, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase, take over, and absorb the business of the Fairbanks Banking Company, a copartnership, and at said meeting negotiations were begun by said mining, professional, and business men with the Fairbanks Banking Company, a copartnership, for the purchase of the same. That said meeting was a preliminary one, and that thereat it was agreed that a corporation should be organized under the laws of the State of Nevada, for the purpose of taking over and absorbing and purchasing said Fairbanks Banking Company, a copartnership. That the name of said corporation should be the Fairbanks Banking Company. That the amount of the capital stock should be \$300,000.00, divided into 3000 shares of the par value of one hundred dollars each. That the property of said bank should be turned over and that, in the event a surplus of assets over liabilities was found to exist, after deducting the sum of two hundred thousand dollars, which was the personal prop-



erty of said E. T. Barnette, stock should be issued to E. T. Barnette for one-half of said surplus, and that either stock or money should be paid to R. C. Wood and James W. Hill, at their option, for the other half of said surplus. That, at said time, it was contemplated that, owing to the great distance between Fairbanks, Alaska, and the State of Nevada, and the uncertainty and slowness of travel, the organization of the said corporation could not be perfected before 15 February, 1908, and it was agreed among said proposed incorporators that the issue of stock for said corporation should be as of date 15 February, 1908, and that the amount of stock subscribed by any person, other than that subscribed for property, should on said 15 February, 1908, be paid for either in cash, or in the event that, at said time, said subscriber was not able to make any cash payment on said stock, each subscriber should give his promissory notes for the individual amount of stock subscribed by him, one due on or before 1 June, 1908, for twenty-five per [69] centum of the amount of the capital stock subscribed by him, and the other for seventy-five per centum thereof, which should become due and payable on or before the first day of July, 1908, said notes to bear interest at the rate of one per centum a month from the date of the issuance of the stock until paid. Further it was agreed that, if at the time the stock should be issued, any of the subscribers should pay therefor an amount equal to twenty-five per centum thereof, then such subscriber was to execute his note for the remaining seventy-five per centum due on or before



the first day of July, 1908. It was also agreed that, if said payment so made should not equal twenty-five per centum of the par value thereof, then such subscriber agreed to execute another note for an amount equal to twenty-five per centum thereof, which should become due and payable on or before the first day of June, 1908, and a note for the remaining seventy-five per cent as hereinbefore set forth.

And for the purpose of carrying out the object of the hereinabove mentioned meeting, a committee consisting of J. A. Jesson, C. E. Claypool, and D. H. Jonas, was appointed to go into the details of the reorganization of the Fairbanks Banking Company and of the *talking* over of the business of said institution by said proposed new corporation. That said committee met on 5 January, 1908, and after investigating the affairs of the bank made the following report to be presented for the consideration of the proposed new incorporators:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908. [70]

(b) That Captain E. T. Bārnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person

be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted.

(e) That all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year be accepted, and that it be the understanding that such deposits will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary. [71]

(j) That the number of the Board of Directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30, and December 31.

Which said report was, on 6 January, 1908, submitted to an adjourned meeting of the professional, mining and business men—the proposed incorporators—and at said meeting the said report was read and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting. That at said meeting a subscription list, a copy of which is set forth in paragraph III of said amended complaint, was presented and signed by the said proposed incorporators, setting forth the amounts for which each respectively subscribed. At said meeting it was also agreed, on behalf of the Fairbanks Banking Company, represented by E. T. Barnette and James W. Hill, that said Fairbanks Banking Company, a copartnership, would turn over to said corporation the property of said Fairbanks Banking Company, a copartnership, on the terms specified in said report, and said proposed incorporators, in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabili-

ties of the Fairbanks Banking Company, a copartnership.

That said Fairbanks Banking Company, a corporation, became a corporation on the 21st day of January, 1908. That, on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining the notes of the subscribers for the stock subscribed by them, and at said meeting said stock notes were subscribed. That at said time the articles of incorporation of said Fairbanks Banking Company had not yet been received from the State of Nevada, and for the purpose of expediency *at* was deemed advisable to elect a Board of Directors, [72] and twelve directors were elected at said meeting, and it was agreed that said Board of Directors should act as such until the arrival of the articles of incorporation, when a formal meeting would be held and proper by-laws be adopted.

That said articles of incorporation did not reach Fairbanks until some time in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect "that the matter of taking over the property of the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, James W. Hill, and R. C. Wood, be left to the Board of Directors."



That, immediately after the adjournment of said stockholders' meeting, the Board of Directors met and organized by the election of a president, vice-president, cashier, assistant cashier, secretary, and treasurer, and at said meeting it was moved and duly seconded that "the Board of Directors ratify the arrangement as to the taking over of the assets, property, business, and liabilities of E. T. Barnette, James W. Hill, and R. C. Wood, upon the terms and conditions as are set forth in the minutes of the meeting of the subscribers held January 5th, 1908, and which is as follows: That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees, and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted, and that all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution, and that all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908; and should James W. Hill [73] and R. C. Wood not take the full forty thousand dollars in stock in the new corporation, the balance of the amount not so taken be paid to them not later than July 1st, 1908, and that the proposition of Captain E. T. Barnette, to leave on deposit with the new corporation the sum of two hundred thousand dol-



lars without interest for one year, be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Causten vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees; and that the executive committee be empowered to see that all papers and transfers be made properly by the officers of the old Fairbanks Banking Company and such transaction legally carried out." Which motion being duly put and seconded the same was unanimously carried.

That, at the meeting held by the proposed stockholders of said corporation on 6 January, 1908, it was believed by all present that the organization of the Fairbanks Banking Company, a corporation, could be perfected by 15 February, 1908, and that, by said date, said corporation could take over the affairs of the copartnership. It was then agreed that, as the expenses of operating the bank from that date up to the time of the taking over of the affairs of the copartnership by the corporation, would fall on the copartnership, that by reason thereof said copartnership should be entitled to all interest on existing loans until the affairs of the copartnership were turned over to the corporation, and for that reason said copartnership was declared to be entitled to interest on existing loans up to 15 February, 1908. At the meeting of the Board of Directors, held on 12 March, 1908, the matter of allowing the copartnership accrued interest up to 16

March, 1908, when it was contemplated that the corporation should take [74] over the business of the copartnership, was taken up and discussed, and it was moved and seconded that the following paragraph contained in the minutes of 5 January, 1908, of the proposed incorporators, to wit: "That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the corporation and the same be payable on or before December 31, 1908," be changed so that the words "February 15 be made to read "March 15," which said motion was duly carried.

That, during all the negotiations hereinbefore mentioned, the defendant R. C. Wood was not in Alaska, and was either in the State of California or the State of Washington, and he had no detailed knowledge or information as to what was being done by the copartnership or the terms of the sale to the corporation. That said Wood's name was signed to the original subscription list without his knowledge or consent, and with the understanding of all the subscribers that it was optional with the said R. C. Wood, on his return to Fairbanks, Alaska, to elect either to take stock in the new corporation or to receive money for the amount of stock to which he was entitled in lieu thereof.

That, in accordance with the instructions of the Board of Directors, the executive committee of said corporation proceeded to have the necessary papers and transfers made out, conveying the property

of the copartnership to the corporation on the terms stated in the resolution of 5 January, 1908, and requested the then attorneys for the bank, McGinn & Sullivan, to prepare the necessary papers for that purpose. That, in compliance with said request the said attorneys undertook to draw up an agreement, stating the true terms and conditions of the sale and transfer, which is the agreement attached to plaintiff's said amended complaint, and marked "Exhibit 1." That said agreement, through the mutual mistake of the copartnership and the [75] corporation and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between the said Fairbanks Banking Company, a copartnership, and the corporation, in this, that said agreement failed to reserve to the said copartnership the accrued interest on all loans up to 15 March, 1908, and further in that it failed to embody the option given to said James W. Hill and R. C. Wood, either to take stock for their portion of the surplus property of the copartnership or to take money, and that in the event of their election to take money the amount should be paid not later than July 1, 1908. That, with said exception, said agreement attached to plaintiff's amended complaint and marked as "Exhibit 1" fully sets forth the terms and conditions agreed on and entered into between the Fairbanks Company, a copartnership, and the corporation.

That, in accordance with the true agreement had between the Fairbanks Banking Company, a copartnership, and the corporation, as set forth in a

preceding paragraph hereof, the Fairbanks Banking Company issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued to said R. C. Wood. That said R. C. Wood returned to Fairbanks, Alaska, on or about 17 April, 1908, and at once notified the Fairbanks Banking Company, a corporation, of his election to take money in lieu of his stock, and said corporation then and there agreed thereto. That, on the return of the said R. C. Wood to Fairbanks, Alaska, he signed the agreement attached to plaintiff's amended complaint and marked "Exhibit 1," with the understanding on his part and of the Fairbanks Banking Company, a corporation, that said contract reserved to him the right to take money in lieu of stock, and it was never contemplated or understood by the said R. C. Wood, or by said corporation that, by signing said agreement he would waive any right to the election that he had [76] already made to take money in lieu of his stock. That said Wood, on or about 17 April, 1908, entered on his duties as cashier, and continued to act in said capacity until 12 May, 1908, when he tendered his resignation to the Fairbanks Banking Company, with the request that he be relieved of his duties at once and that said request be acted on. That, on said resignation being presented to the Board of Directors, it was the unanimous desire of all the directors present that the said R. C. Wood continue to act as cashier until said bank should get on a cash basis, said bank at said time being on what was known as a



script basis. The said Wood thereupon continued as such cashier up to and until 29 June, 1908, when his resignation was accepted. That said Fairbanks Banking Company, a corporation, in accordance with its understanding of the agreement existing between it and the said R. C. Wood, subsequently paid to him the sum of thirteen thousand dollars, being the amount of stock that he was entitled to receive, under the terms of the agreement entered into between the copartnership and the corporation. That the Board of Directors and the officers of said bank, in paying said money to said R. C. Wood, merely carried out the terms of the agreement entered into between the subscribers of stock and the copartnership on 5 January, 1908, and which was ratified as a part of the arrangement entered into between the copartnership and the corporation at the meeting of the Board of Directors held on 12 March, 1908.

That there was paid to said E. T. Barnette, James W. Hill, and R. C. Wood, by the Fairbanks Banking Company, the sum of \$39642.81 on account of interest accrued on loans up to and until the 15th day of March, 1908. That this amount paid by said corporation to said Barnette, Hill, and Wood, was done in accordance with the terms of the agreement made and entered into between the copartnership and the proposed incorporators on 5 January, 1908, save and except that the time thereof was subsequently extended by the Board of Directors from 15 February, 1908, to 15 March, 1908. [77]

That said contract so entered into between the



proposed incorporators and the copartnership was ratified by the corporation on 12 March, 1908, and the Board of Directors and officers of said corporation, in paying to the said Barnette, Hill, and Wood the said sum of \$39642.81, merely carried out the terms of the agreement entered into between the corporation and said persons, but, as hereinbefore stated, said provision was inadvertently and through mistake of the parties omitted from said contract attached to plaintiff's amended complaint and marked "Exhibit 1."

The defendants, particularly answering paragraph VI of said amended complaint, alleges that the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a copartnership, was done by the stockholders of said corporation, and that the agreement entered into between the Fairbanks Banking Company, a copartnership, and the proposed incorporators, was long prior to the election of the Board of Directors, and that said Board of Directors, in authorizing the taking over of the property of the said Fairbanks Banking Company, a copartnership, on the terms agreed, was merely carrying out the instructions of the stockholders and such act was merely a ratification of the arrangements entered into between the stockholders of said corporation and the Fairbanks Banking Company.

Particularly answering paragraph VIII of said amended complaint, the defendant Wood *allege* that he was not present at Fairbanks, Alaska, at the time that the price of said Gold Bar Lumber Com-

pany stock was agreed on, nor did he participate in any way in the sale of the same to the corporation. The defendant McGinn alleges that, at the time that said Gold Bar Lumber Company stock was accepted by the Fairbanks Banking Company, a corporation, for the sum of \$341949.00, he honestly and in good faith believed that said property, so accepted, was worth said amount, and has, ever since said time, believed that said [78] property, under favorable market conditions, is worth said amount. That, at the time that he became a stockholder of said corporation, he had no personal knowledge as to the value of said Gold Bar Lumber Company stock, and relied on the statements and reports made to him by people who were personally acquainted with the property and also on the report of the board of trustees, made on 16 December, 1908.

The defendant Wood, answering paragraph IX of said amended complaint, alleges that he was not in Fairbanks, Alaska, nor within the Territory of Alaska, at the time the notes and loans therein mentioned were taken over by the Fairbanks Banking Company, and that he did not participate in the sale or transfer of said notes and loans from the copartnership to the corporation in any way. That he now believes that said notes and loans set forth in said paragraph IX were then collectible and were worth the amount for which they were accepted. The defendant McGinn, answering said paragraph, alleges that when he became a stockholder of said Fairbanks Banking Company, and during the time that he was acting as attorney for said Fairbanks

Banking Company, he did not go through the loans and discounts of the bank to determine the value of said loans and discounts, nor if he had done so would he have been in a position to determine what the value of the loans and discounts was, but that he depended on the report of the officers of the institution and the report that the board of trustees made as to the loans and discounts of said bank.

And defendants, for a further and separate answer and defense, allege:

That the said E. T. Barnette, who is jointly charged with these defendants as to all the wrongs complained of in plaintiff's said amended complaint on file herein, was, during the time of all the transactions mentioned in said complaint, the president of said Fairbanks Banking Company, afterward known [79] as the Washington-Alaska Bank, and one of its directors.

That, at the time of the suspension of said bank the said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said bank and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against him on account of any of the matters and things set forth in the said amended complaint herein.

That, as a result of said negotiations and in full satisfaction of all the wrongs complained of in plaintiff's amended complaint, the said E. T. Barnette

on 18 March, 1911, executed an instrument in writing, in which he admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all the depositors and creditors of said bank in full, not later than 18 November, 1914, together with interest on all amounts due to creditors and depositors from said 4 January, 1911, until paid.

That Isabelle Barnette is the wife of said E. T. Barnette and the said Isabelle Barnette was desirous of aiding her said husband in the payment of the creditors and depositors of said Washington-Alaska Bank, and to that end joined her said husband in the promise to pay all the depositors and creditors of the said Washington-Alaska Bank, on the terms above expressed.

That said promises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or others for or on account of any of the matters and things set forth in the amended complaint. That, for this purpose and to prevent any litigation and as security for the faithful performance of the promises made by [80] the said E. T. Barnette and Isabelle Barnette, the said Isabelle Barnette and E. T. Barnette, on 18 March, 1911, with the knowledge, consent, and approval of this Court, conveyed to the receiver of said bank, and said receiver, by order of this Court, accepted the conveyance of title to an improved plantation containing 18,723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and lots situated in the incorporated town of Fairbanks, Ter-



ritory of Alaska, and certain large interests in valuable association placer mining claims situate in the Fairbanks Precinct, Territory of Alaska, all of which properties belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette, and are worth the sum of one million dollars, a sum greatly in excess of the unpaid debts and liabilities of said bank.

That, in said deed of said property situate in the Republic of Mexico, it is expressly provided that said receivers may sell all or any part of said land at private sale, on or after 18 November, 1914, for the purpose of raising funds with which to pay the claims of the depositors and creditors of said bank then remaining unpaid, and out of the proceeds thereof said receivers are directed to pay all the claims of depositors and creditors of said bank then remaining unpaid; and in said deed said grantors further authorize and empower said receivers to collect and receive the amount of \$226,025.00, payable 18 November 1914, in case an option given 18 November, 1909, for the purchase of forty-nine per centum thereof is exercised by this time, and to apply such sum to the payment of said debts; and said deed to property situate in the Territory of Alaska also gives said receivers power to collect and receive all the rents, royalties and profits from the property therein described and to sell said property and to apply the amounts so received in payment of said debt.

That said receiver, plaintiff herein, holds a large amount of property belonging to said bank, which



is of great value and [81] has not been converted into money, and the property so held by him and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all claims, demands and obligations of whatsoever nature now existing against said Washington-Alaska Bank of Nevada.

That the then receivers of the said Washington-Alaska Bank agreed to accept, in full satisfaction of all the matters and things set forth in plaintiff's said amended complaint and sued on herein, the said premises and property of said E. T. Barnette and Isabelle Barnette, and the said E. T. Barnette and Isabelle Barnette made and executed said promises and conveyed said property in full satisfaction of all suits or causes of action then existing against him on account of any and all matters and things arising from his connection with the said Washington-Alaska Bank and in full satisfaction of all the matters and things set forth in the amended complaint herein, and the said receivers accepted and received said promises and said property in full satisfaction of all the claims and causes of action set up in said amended complaint of plaintiff herein.

And the defendants, for a further and separate answer, allege—

That, on 18 March, 1911, and for the express purpose of preventing litigation against him for and on account of the matters and things set forth in said amended complaint, and where it is alleged that the defendants herein are jointly liable with the said E. T. Barnette, the said E. T. Barnette

and Isabelle Barnette, his wife, promised and agreed to pay to all the creditors and depositors of the said Washington-Alaska Bank not later than 18 November, 1914, all sums that should then be found to be due to them, with interest on said amounts from 4 January, 1911, until paid. [82]

That, for the purpose of securing the faithful performance of said promises, the said E. T. Barnette and Isabelle Barnette, with the consent and approval of this Court, deeded and conveyed to the said receiver a valuable improved plantation, containing 18723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and lots situate in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situate in the Fairbanks Precinct, Territory of Alaska, all of which property belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette.

That, in said deed of the properties situate in the Territory of Alaska, the receiver was given power to collect and receive all rents, royalties and profits therefrom, and to apply the amount received from said properties in satisfaction of the claims of the creditors and depositors of said bank,

That these answering defendants are informed and believe and so allege that the said receiver has received as rents, royalties and profits from the said property, approximately the sum of thirty-three thousand dollars, and the value of the property held by the receiver and situate in the Territory of

Alaska, other than the said sum of thirty-three thousand dollars, is of the value of not less than twenty-five thousand dollars.

That the amounts of money and property already received by the said receivers from the estate of the said E. T. Barnette are more than ample to pay all the matters and things charged against these defendants in the amended complaint of the plaintiff herein and answering defendants allege that all the wrongs and things charged against these defendants in the said amended complaint have been fully satisfied and paid. [83]

Wherefore these answering defendants pray:

(1) That the agreement attached to plaintiff's amended complaint and marked "Exhibit 1" be reformed so as to express the true agreement of the parties, as in answering defendants' answer hereinbefore set forth.

(2) That plaintiff take nothing by this action and that the defendants recover their costs and disbursements.

(3) That these answering defendants have such other and further relief as to the Court may seem just and equitable in the premises.

JOHN L. MCGINN and

A. R. HEILIG,

Attorneys for Answering Defendants.

Territory of Alaska,

Fairbanks Precinct—ss.

John L. McGinn being first duly sworn according to law, on his oath deposes and says:

I have read the foregoing answer, know the con-

tents thereof, and believe the same to be true, and as to the matters and things alleged on information and belief I also believe the same to be true.

JOHN L. MCGINN.

Subscribed and sworn to before me, the undersigned, on this 27th day of September, A. D. one thousand nine hundred and thirteen.

[Seal]

JOHN A. CLARK,

Notary Public in and for the Territory of Alaska.

My commission expires Apr. 24, 1914.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Answer. Filed in the District Court, Territory of Alaska, 4th Div., Sep. 29, 1913. C. C. Page, Clerk. By Angus McBride, Deputy. [84]

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[Title of Court and Cause.]

**Demurrer to New Matter in Separate Answer of Defendants, Wood, Healy and McGinn.**

Comes now the plaintiff and demurs to the new matter set up in the separate answer of the defendants R. C. Wood, J. A. Healy and John L. McGinn as follows:

1. He demurs to said new matter set up as a further, separate and affirmative defense as a basis for reformation of contract for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

2. He demurs to the new matter set up in the last further and separate answer of these answering defendants, pleading that the wrongs complained of

against said defendants have been satisfied and paid in full by the rents, royalties and profits derived from the Barnette trust deed, for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

O. L. RIDER,

Attorney for Plaintiff.

Service of copy accepted this 2 day of October, 1913.

J. L. McGINN &

A. R. HEILIG,

Attorneys for Defendants Wood, Healy and McGinn.

[Indorsed]: No. 1756. F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson, et al., Defendants. Demurrer to Separate Answer of Defendants, Wood, Healy and McGinn. Filed in the District Court, Territory of Alaska, 4th Div. Oct. 2, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy. [85]

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[Title of Court and Cause.]

### **Rulings on Demurrers.**

Now on this day, the demurrers to the separate answers of the defendants John A. Clark, J. A. Jesson, Raymond Brumbaugh, E. R. Peoples, Jas. W. Hill, George Preston, R. C. Wood, J. A. Healy and John L. McGinn having previously been heard and submitted to the Court for its decision, O. L. Rider, in behalf of plaintiffs, and McGowan & Clark, and A. R. Heilig, in behalf of defendants, being present in open court; and the Court being duly and fully advised in the premises,



IT IS ORDERED, that the demurrer to the third separate answer and defense in the answer of John A. Clark is overruled, and the demurrer sustained as to the fourth separate answer and defense; that the demurrer is sustained as to the first and fourth separate answers of J. A. Jesson, Raymond Brumbaugh, E. R. Peoples and Jas. W. Hill, and overruled as to the third; sustained as to the fourth separate answer of Preston, and overruled as to the third; and sustained as to the first separate further answer of R. C. Wood, J. A. Healey and John L. McGinn, and overruled as to the last one.

F. E. FULLER,  
District Judge. [86]

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[Title of Court and Cause.]

**Amended Answer of Defendants John A. Jesson,  
Raymond Brumbaugh, E. R. Peoples, James W.  
Hill, John A. Clark, and George Preston.**

Comes now the defendants, John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston, and by leave of Court first had and obtained, file the following as their amended answer to the amended complaint on file herein, and admit, deny and allege as follows, to wit:

Allege that the terms of service of these defendants were not concurrent, save and except that the defendant John A. Jesson was a director of said bank at all the times between March 12, 1908, and the time of the suspension of said bank on January 4, 1911, and the terms of office of the other defendants, ap-

pearing herein, covered various periods during said time of service of said John A. Jesson, the terms of office of said other answering defendants being as follows, to wit:

James W. Hill, from September 12, 1908, to September 12, 1909; E. R. People from Sept. 12, 1908, to April 24, 1909; Raymond Brumbaugh, from March 13, 1909, to September 12, 1910; John A. Clark from May 12, 1910, to January 4, 1911; George Preston, from September 12, 1910, to December, 1910; and said defendants above named whose terms of officer were not coextensive with the terms of said John A. Jesson, have not sufficient information, knowledge or belief as to the matters charged against the directors at the periods when said answering defendants were not directors, to enable them to admit or deny the allegations of said amended complaint, from personal knowledge, and all of said answering [87] defendants, with the exception of John A. Jesson, basing their denials upon such lack of information, knowledge or belief, save and except as hereinafter expressly admitted, deny each and every and all of the matters and things contained in said amended complaint, alleged to have transpired during the terms of office of the directors at the periods during which these answering defendants were not directors of said corporation; and

The defendant James W. Hill unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have happened during the period said James W. Hill was a director of said

bank, as above set forth; the defendant Raymond Brumbaugh united with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said Raymond Brumbaugh was a director of said corporation; the defendant E. R. Peoples unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said E. R. Peoples was a director of said corporation; the defendant John A. Clark unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said John A. Clark was a director of said corporation; and the defendant George Preston unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said George Preston was a director of said corporation.

Subject to the limitations and conditions last above set forth, these defendants, for an amended answer to the amended complaint on file herein, and to the acts and things alleged to have [88] been done and performed during their respective terms of office, admit, deny and allege as follows, to wit:

I.

Answering paragraph III of said amended complaint, these defendants deny that E. T. Barnette, R. C. Wood and James W. Hill, circulated, or caused to

be circulated, in the city of Fairbanks, or vicinity, or elsewhere, stock subscription lists, subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were, or are, in words and figures as set forth in paragraph III of said amended complaint.

## II.

Answering paragraph IV of said amended complaint, these answering defendants admit that said E. T. Barnette signed said subscription list for four hundred forty shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty shares of said capital stock, but deny that the same was signed or subscribed by the said R. C. Wood for two hundred twenty shares or any shares, and deny that said James W. Hill, R. C. Wood and E. T. Barnette caused said subscription lists to be circulated or that they circulated the same.

## III.

Answering paragraph V of said amended complaint, defendants deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on 12 March, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held on 8 February, 1908; deny that on 12 March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, was elected; and deny that the said E. T. Barnette named or selected said Board of



Directors, otherwise than by placing the names of said [89] persons in nomination at the meeting of the subscribers and stockholders held 8 February, 1908.

#### IV.

Answering paragraph VI of said amended complaint, these defendants deny that, on 13 March, 1908, said board of directors authorized the acquisition or purchase of the Fairbanks Banking Company, a copartnership, or the assets in business of said Fairbanks Banking Company, a copartnership, otherwise than as in the further, separate, and affirmative defense of these defendants hereinafter set forth. Deny, except as in the further and separate answer of these defendants hereinafter set forth, that the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a copartnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated 16 March, 1908, and deny that a true copy of the same is attached to the amended complaint and marked "Exhibit 1."

#### V.

Admit that there were issued to E. T. Barnette 260 shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1." Admit that there were 130 shares of the capital stock of said corporation issued to James W. Hill, but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defend-



ants. Deny that there were ever issued to R. C. Wood 130 shares of the capital stock of said Fairbanks Banking Company. Admit that the assets of said copartnership, enumerated and described in said contract "Exhibit 1," were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants. [90]

## VI.

Answering paragraph VIII of said amended complaint, these defendants deny that, at or immediately prior to the transfer of the assets of the Fairbanks Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,-067.89, or a less sum than \$341,949.00. Deny that, at the date of said transfer, the value of said Gold Bar Lumber Company stock was a sum less than \$248,-067.89 or was of a less value than the sum of \$341,-949.00. Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased or grossly fraudulent or any over-valuation of more than \$93,-881.11 or any sum whatsoever, and deny that the same or all of it was done or accomplished with the full knowledge, co-operation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Shepard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnall, and John P. Anderson, or of the defendants R.

C. Wood, James W. Hill, B. H. Dusenbury, and John L. McGinn; and deny that, at said time, the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the Territory of Alaska. Deny that the business of the Gold Bar Lumber Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature, and deny that the capital stock of said Gold Bar Lumber Company was not delivered to said Fairbanks Banking Company, a corporation.

## VII.

Answering paragraph IX of said amended complaint, these defendants deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation. Deny that, of the notes so sold or transferred to said corporation, a large amount was then past due, worthless, or uncollectible, and deny that the amount of past due, worthless, and uncollectible paper was [91] a sum in excess of \$53,000.00 or any sum; and deny that the same are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph IX of said amended complaint, were worthless or uncollectible, or that the same are worthless and uncollectible; deny that it was then and there well known to said defendants, directors, or officers aforesaid, or by each of them, or by the exercise of ordinary or of great care might have been so known to them or any or each of them, that the said notes listed in said paragraph IX of said amended complaint, were, at the

time that the same were accepted by or transferred to the said Fairbanks Banking Company, a corporation, past due or worthless or without substantial value.

### VIII.

Answering paragraph X of said amended complaint, these defendants deny that, for the 1502 shares of the capital stock of said corporation, issued on 14 March, 1909, the same were all paid for by promissory note, but allege that some were paid for in cash. Deny that a large amount of said notes was, or still is, worthless or uncollectible, or that the same has never been paid, and deny that the amount of said worthless and uncollectible notes is of the face value of \$22,982.33, or any other sum.

### IX.

Answering paragraph XI of said amended complaint, these defendants deny that there was an issued capital stock of \$202,200.00 or a greater sum than \$189,200.00. Deny that, with no other assets than those of the Fairbanks Banking Company, a copartnership, as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200.00 the Fairbanks Banking Company, a corporation, commenced business as a bank. Deny that the amounts and the assets set forth in said paragraph XI constituted [92] all of the assets of said Fairbanks Banking Company, a corporation. Deny that the sum of \$200,000.00 belonging to E. T. Barnette was an alleged special deposit, and deny that the same was not in fact deposited by said E. T. Barnette.

## X.

Answering paragraph XII of said amended complaint, these defendants deny that, on 16 March, 1908, when said Fairbanks Banking Company, a corporation, commenced business, said corporation was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts; but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations. Deny that the actual insolvency of said bank was then known to the directors or officers of said institution hereinabove mentioned, or that, by the exercise of great, ordinary, or other care, might have been known. Admit that said bank on 16 March, 1908, was on a script basis, but allege that all the other banks in the Fairbanks precinct, and the major portion of the banks throughout the United States, were upon the same script basis owing to the financial flurry in existence at that time.

## XI.

Answering paragraph XIII of said amended complaint, these defendants deny that said bank, or the defendants mentioned in said amended complaint, or the officers, directors, and employes of said bank, at all times or any times falsely and wrongfully, or otherwise, represented or held out to the public generally, or otherwise, that said Fairbanks Banking Company, a corporation, had paid up capital stock of \$300,000.00.

## XII.

Answering paragraph XIV of said amended com-

plaint, these defendants allege that they are informed and believe, and basing their denials on such information and belief, deny that John L. McGinn was a director of said bank from and including 13 September, [93] 1909, to 12 May, 1910. Deny that John L. McGinn and R. C. Wood, or either of them, continued to act as directors of said bank subsequent to the first day of May, 1910.

### XIII.

Answering paragraph XVII of said amended complaint, these defendants deny that the defendant L. N. Jesson acted as an executive officer of said corporation, or as a member of the executive committee thereof, until 12 September, 1910, or any other time.

### XIV.

Answering paragraph XVIII of said amended complaint, these defendants admit that at the meeting of the Board of Directors held 12 March, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered on the duties thereof, or that he accepted said office or entered on his duties as cashier prior to 17 April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until 29 June, 1908, but allege in this connection that on 12 May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but at the request of the Board of Directors continued to act as cashier until 29 June, 1908.



*XIV.*

Answering paragraph XIX of said amended complaint, these defendants deny that, shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof, or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the dates of surrender and the number of shares surrendered and the names of the [94] parties surrendering or the amount of cash or subscription notes returned thereof, is as is set forth in the list set out in said paragraph XIX of the amended complaint. Deny that the defendant R. C. Wood ever surrendered any issued capital stock to said Fairbanks Banking Company, a corporation, and deny that he was ever the owner of the same. Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received, any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor.

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were

further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge consent or approval of the defendants or each of them who constituted its Board of Directors or officers, on the date set forth in said paragraph XIX, or that by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surrendered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the Board of Directors of said bank, or with the knowledge, consent, or approval of the defendants.

Deny that James W. Hill was a director at any time after September 12, 1909; deny that E. R. Peoples was a director at any time after April 24, 1909; and deny that George Preston was a director at any time after December, 1910. [95]

#### XIV—A.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2020 shares of the capital stock of said corporation on the 4th day of March, 1908, or a greater amount than 1892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital stock never exceeded 2156 shares, or after the 9th day of November, 1909, never exceeded 726 shares, these defendants have no knowledge or

information sufficient to form a belief, and therefore deny the same.

#### XIV—B.

Answering paragraph XXI of said amended complaint, these answering defendants deny the allegations therein contained, save and except that they admit that the interest was computed on the loans of the old Fairbanks Banking Company up to March 15, 1908, and that the Board of Directors on March 12, 1908, authorized and directed that the interest on the notes and discounts be so computed and be payable on or before December 31, 1908, and that the said amount was as alleged in said paragraph, and was credited on the "old bank interest account"; and admit the issuance to R. C. Wood of the certificate of deposit alleged therein; admit the withdrawal of five thousand dollars by said defendant Hill; admit the credits placed to E. T. Barnette, James W. Hill and R. C. Wood; and admit the payment of said sum to them; and admit that the money was paid from the funds of the bank regardless of whether or not it had been collected from the makers of said notes.

#### XIV—C.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70040.10

[96] of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value; Deny that said Fairbanks Banking Company, a corporation, with the express knowledge, consent or approval of the defendants in said paragraph XXIII mentioned, the then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for said capital stock thereof, a premium or bonus or more than \$100,000.00 or any other sum over and above the then paid in capital stock of the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate



and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank. [97]

#### XIV—D.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time and prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own board of directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Company, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00, and in this connection these defendants allege that the directors of said Washington-Alaska Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a



corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management of the defendant, R. C. Wood, otherwise than as has been set forth in the *proceeding* paragraph. Admit that the amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66,839.16 to \$57,169.76, but deny that said decrease was a net loss of \$9,669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57,169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets loans and discounts past due [98] without substantial value, or which had not yet been collected or can not be collected, amounting to the sum of \$76,005.35, or another amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00 but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

#### XIV—E.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then Board of Directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation,

wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of \$168,600 a dividend of twenty per centum, amounting to \$33,720.00.

#### XIV—F.

Answering paragraph XXVII of said amended complaint, these defendants deny that, on 12 April, 1910, or at, or before, the time when said dividend mentioned in the *proceeding* paragraph was ordered to be paid, the said Fairbanks Banking Company, a corporation, was, or long prior thereto had been, in a grossly insolvent or failing condition. Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus, or undivided profits on hand, out of which said dividend could legally be paid, and deny that at or prior to said date, said Fairbanks Banking Company had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the assets carried by the Fairbanks Banking Company on its books of \$75,000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet [99] been paid, or that can not be collected, in a sum amounting to \$118,250.47, or any other sum. Deny that the capital stock of the

Gold Bar Lumber Company originally had been, or still was on said 12 April, 1910, fraudulently overvalued by a sum in excess of \$93,881.11 or any sum. Deny that said dividend amounting to the sum of \$33,720, was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W. Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson was a member of the executive committee of said corporation), or of R. C. Wood (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks Banking Company, a corporation, owed to depositors the sum of \$960,689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

#### XIV—G.

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then

directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and [100] John L. McGinn was claimed to have been made under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered into without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for any entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was due, suffered, or permitted by and with the knowledge, consent, or approval of all the then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum, to wit, in a sum in excess of \$25,000.00 or any sum.

#### XIV—H.

Answering paragraph XXIX of said amended



complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge, or means of knowledge, of the grossly insolvent and failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Barnette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation, was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw in cash the whole of said alleged special deposit of two hundred [101] thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation, these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and



all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent and approval of the then Board of Directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

XV.

Answering the allegations of paragraph XXX of said amended complaint, these answering defendants admit the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the manner therein set forth, but allege that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of their lack of information and belief in the matter, deny that there was owing to the said depositors the sum of \$947,-800.29.

Further answering the allegations of said paragraph XXX these answering defendants deny that said Washington-Alaska Bank of Washington had no divided profits on hand at the time of said consolidation, and avers that, as they are informed and believe, and therefore so allege on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4,658.92; that answering defendants are informed and believe and basing their denial on such information and belief, deny that the capital stock of the said Washington-Alaska Bank of Washington [102] was seriously impaired, or impaired in any

way, as alleged in said paragraph, or at all; deny that said bank had on hand at said time loans and discounts in the sum of \$100,704.98, which were bad, worthless and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; allege that they have no information or belief as to whether the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington, at their face value or at their present worth, and allege that they have no information or knowledge as to whether said notes have been paid, but are informed and believe that a portion of said notes has since been paid, and basing their denial on such information and belief and lack of information, deny that the notes of the face value of \$100,707.98, carried by the Washington-Alaska Bank of Washington on its books on the 1st day of October, 1910, have not been paid; deny that, on the 1st day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100,704.98, carried on the books of the Washington-Alaska Bank of Washington were worthless, or bad, or uncollectible, or that any material portion thereof was so worthless, or bad, or uncollectible; admit that, after said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and deny that, at all times after the first day of October, 1910, or at any time after said 1st day of October, 1910,

said directors, wrongfully, fraudulently, and without right, or wrongfully or fraudulently, or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock \$75,000.00"; admit that said item was carried on the books, as therein set forth, but deny that said asset had no existence whatsoever, so that the same was purely imaginary, false, and fraudulent, or imaginary, or false, or fraudulent.

## XVI.

Answering the allegations of paragraph XXXI of said amended complaint, these answering defendants admit that, subsequent to [103] the 1st day of October, 1910, and up to and including the 4th day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but deny that said bank was, during said time, insolvent and in a failing condition or insolvent, or in a failing condition, as alleged in said paragraph; admit the institution of the action entitled Tanana Valley Railroad Company, a corporation, and John Zug, plaintiffs, vs. Washington-Alaska Bank, the appointment of F. W. Hawkins as receiver; that he thereafter qualified and entered upon his duties on the 5th day of January, 1911, and that thereafter on January 6, 1911, said District Court, by order duly entered, appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and that said Mack thereupon duly qualified and entered upon the discharge

of his duties as such receiver, and that said Hawkins and Mack thereafter continued to act as joint receivers of said Washington-Alaska Bank until the 12th day of May, 1911, admit their resignation on the 12th day of May, 1911, and admit the appointment of F. G. Noyes as receiver of said Washington-Alaska Bank, but deny each and every other matter and thing therein contained, and specifically deny the allegations therein contained that "said F. G. Noyes thereupon duly qualified as such receiver and ever since has been and now is the duly qualified and acting receiver of Washington-Alaska Bank."

#### XVII.

Answering the allegations of paragraph XXXII, these answering defendants aver that they have no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the 4th day of January, 1911, as alleged in said paragraph, but deny that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of these answering defendants, or of the Board of Directors of which these defendants were members, rendered insufficient to pay said liabilities in full, and deny that the assets of said bank were impaired, injured, or rendered insufficient to pay the liabilities of said bank, by reason [104] of any act or thing done by these answering defendants, or their codirectors during the times these defendants were members, respectively, of said Board of Directors.

#### XVIII.

Answering the allegations of paragraph XXXIII



of plaintiff's said amended complaint, these answering defendants deny that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admit that there have been paid on the acknowledged and proven liabilities of the bank, dividends aggregating fifty per centum, and answering defendants allege that they have no knowledge or information as to whether or not \$12,-627.70 of said dividends have either not been called for or have been withheld by order of Court; and answering defendants are informed and believe, and therefore so allege, that a portion of the claim of the Dexter Horton National Bank of Seattle has been paid, and basing their denial on such information and belief, deny that there is due or owing to said Dexter Horton National Bank of Seattle, the sum of \$128,899.37, but allege that they have no knowledge of how much is due to said bank; answering defendants further allege that they have no information as to whether creditors to the amount of \$4,132.62 have failed to prove their claims or have not demanded dividends.

\* XIX.

Answering the allegations of paragraph XXXIV, these answering defendants admit that, on the 4th day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle a large sum of money, the exact amount of which is to these answering defendants unknown, and admit the remainder of said paragraph.

XX.

Answering the allegations of paragraph XXXV



of plaintiff's amended complaint, these answering defendants deny that the stock [105] of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and allege that they have no information or belief as to whether or not F. G. Noyes as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum whatsoever; so neither admit nor deny said allegation; answering defendants are informed and believe, and basing their denial on such information and belief, deny that the stock of the Gold Bar Lumber Company has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and deny that any valuation in excess of said sum is wholly uncertain and speculative.

## XXI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, these answering defendants allege that they have no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver, other than the Gold Bar Lumber Company stock, as alleged in said paragraph, sufficient to form a belief, and expressly deny that there are not now in the hands of the receiver, and were not in the hands of said receiver at the time of the filing of said complaint, other assets than the assets set forth

in said paragraph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31, are not of that value, these answering defendants allege that they have no information or knowledge sufficient to form a belief as to said matters, and basing their denial upon such lack of information and belief, deny the same. Deny that only \$80,000.00 thereof is owing from solvent debtors and can be collected, and deny that the balance thereof is bad, worthless, and uncollectible, or bad, or worthless, or uncollectible. Answering defendants [106] allege that they have no knowledge as to the actual cash or market value of the real estate, furniture and fixtures sufficient to form a belief in order to enable them to admit or deny the same.

## XXII.

Answering the allegations of paragraph XXXVII of plaintiff's said amended complaint, these defendants deny the matters and things therein set forth.

## XXIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, these answering defendants deny each and every matter and thing therein contained.

## XXIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, these answering defendants deny each and every matter and thing therein contained.

James W. Hill expressly denies that he was a di-

rector of said bank at any time after the 12th day of September, 1909, and alleges that he resigned as such director on or about the 12th of September, 1909, and left the Territory of Alaska about the 19th day of September, 1909, and did not return thereto until after the suspension of said bank, and did not participate in any meeting of any of said directors after his said resignation.

E. R. Peoples, particularly answering paragraph XXII of said amended complaint relating to the purchase of the Washington-Alaska Bank alleges that he did not participate in said purchase and that he was not a director and was not present at the meeting of the Board of Directors when said purchase was made, and that his resignation as such director had been sent in on the 24th of April, 1909, to the secretary of said bank, and that at said time he sold his stock and was no longer a director and did not participate in any meeting of said directors thereafter.

For a further, first and separate affirmative answer and by way of a defense, these answering defendants allege as follows, to wit: [107]

That at all the times mentioned in plaintiff's amended complaint, to wit, from the time of the organization of the Fairbanks Banking Company, a corporation, under the laws of the State of Nevada, in the month of March, 1908, up to and including the 4th day of January, 1911, E. T. Barnette was a member of the Board of Directors and president of said corporation, was the active head thereof, and was at

all times thoroughly conversant with the affairs of said bank.

That one of the principal assets of said bank, to wit, three-fourths of the capital stock of the Gold Bar Lumber Company, a corporation organized under the laws of the State of Washington, was carried on the books of the bank at a sum of \$341,941.00, and was purchased by the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, R. C. Wood, and James W. Hill, and was, as these answering defendants are informed and believe and so allege, purchased by said E. T. Barnette for said copartnership, and he was at all times familiar with the affairs of said corporation known as the Gold Bar Lumber Company, and with the value of its properties, the extent and variety of its assets and the amount of its liabilities, and knew the value of said stock.

That during the greater part of the time that said E. T. Barnette was a director of said corporation and president thereof, he was actively engaged in mining in the Fairbanks precinct in the Territory of Alaska, and was familiar with the financial standing and moral responsibility of the majority of men who were carrying on mining operations or engaged in business in said Fairbanks district, and as answering defendants are informed and believe, and so allege, passed on and gave his judgment on most of the loans that were made during the time that he was president of said bank while in the Territory of Alaska. [108]

That with the exception of two other directors,

said E. T. Barnette is the only director who was a director from the time of the organization of said bank until its close, and he was, at all times during the existence of said banking corporation, recognized by the public at large as a man of wealth, and these answering defendants are informed and believe and so allege, that a great deal of the business of said bank was acquired by, through, and by reason of the personal friendship between depositors and other persons doing business with said bank and the said E. T. Barnette, and that he alone of all the directors, answering defendants here, had personally visited the properties of the Gold Bar Lumber Company and had first-hand knowledge and information as to their value and the condition thereof.

That none of the other directors of said bank were paid any salary, and all the other directors were men engaged in other lines of business and who served as directors more from a sense of duty than for gain. That said E. T. Barnette was the only one who was in a position to devote any considerable portion of his time to the affairs of said bank, and the said E. T. Barnette had an office in said bank, and the officers and employees of said bank were subject to receive orders from him, within the limits prescribed by the by-laws of said banking corporation, and all the books, records, loans, notes, and discounts of said bank were readily accessible to him, and all the affairs of said bank were by him thoroughly understood.

That at the time of the suspension of said bank, the said E. T. Barnette was not in the Territory of



Alaska, but was in the State of California, and after the suspension of said bank and about the month of February, 1911, and long prior to the commencement of this action, after he had been advised that said bank had been suspended and receivers appointed therefor, the said E. T. Barnette voluntarily returned to Fairbanks, and entered into negotiations with the then receivers of said bank with the purpose of arranging for [109] the payment of any indebtedness that might remain due to the creditors of said bank after the assets of said bank had been realized on, and to that end he proposed to said receivers that he would deposit with them income-bearing and other properties greatly in excess of the amount that would be required to satisfy and pay all sums that would remain due to the creditors of said bank after the collection of the notes due to said bank and the realizing by said receivers on the assets of said bank other than notes and mortgages, and at said time said E. T. Barnette submitted a proposition in writing to said receivers, wherein he acknowledged that he himself was liable for any irregularities that might have occurred in the management of said bank and for any loss that had been sustained by reason of any of the acts and things that are in plaintiff's said amended complaint alleged to have been performed and done by the directors and officers of said bank, and the said E. T. Barnette then and there promised and agreed to pay all sums that might be necessary to be paid in order to settle the claims of the creditors in full, together with interest on said indebtedness at the rate of six per cent per annum

from the time of the suspension of said bank.

That by reason of said offer and on or about the 18th day of March, 1911, said E. T. Barnette executed and delivered to said receivers of said bank an instrument in writing, termed and designated a trust deed, wherein he acknowledged his liability for the payment of the amounts due to the depositors and holders of unpaid drafts issued by said bank, as well as any other indebtedness of said bank for which he might be liable, by reason of any mismanagement on his part as president and one of the directors of said corporation, which said deed conveyed to said receivers and their successors in interest, in trust for the purposes therein specified, certain improved rural property situate in the Republic of Mexico, certified copy of which deed is now in the possession of the plaintiff in the above-entitled action, and to which reference is hereby specifically made for more particular description thereof. [110]

That, at said time and place, the said E. T. Barnette and Isabelle Barnette, his wife, executed and delivered to said receivers a trust deed conveying all the real property of every nature and description situate in the Fairbanks precinct, Territory of Alaska, to which said E. T. Barnette and Isabelle Barnette, had title, which said property consisted in income-producing mining claims and income-producing town property situate in the town of Fairbanks, Territory of Alaska, which said deed was in the same form as the trust deed last hereinabove referred to, save and except that it was provided therein that all

moneys derived as rentals from any of the said town property and as royalties from said mining claims should be collected by said receivers and disbursed and paid out to the creditors of said bank at any time on the orders of the district court.

That said Isabelle Barnette was never at any time a director of said bank or in any way liable for any of its said indebtedness and she joined in said transfer and in said petition to the Court to accept said trust deeds by reason of the love and affection she bore for her said husband and to assist him in paying his indebtedness of said bank.

That as these answering defendants are informed and believe and so allege, said deeds were delivered for the express purpose of securing the payment not only of the depositors and the holders of the unpaid drafts, but also all other indebtedness of every nature and description owing by said bank at the time of its suspension, together with interest at the rate of six per centum per annum from the time of its said suspension.

That the said E. T. Barnette, in said instrument, agreed as promised to pay said depositors and holders of unpaid drafts in full for all sums due to them, with interest as aforesaid, not later than the eighteenth day of November, 1914.

That thereafter the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska referred said [111] application to the receivers for their consideration, and they thereafter, after considering said proposition and taking up the matter with the attorney for said receivers, ap-

pointed by the Court, petitioned the Court for leave to accept said securities, subject to the terms and conditions therein specified, for the uses and purposes therein set forth.

That thereafter the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska in writing authorized and directed said receivers to receive the said deeds and to enter into possession of the properties situate in the Fairbanks precinct, subject to the terms and conditions set forth in said written proposition of said E. T. Barnette and Isabelle Barnette and the terms and conditions of said trust agreement.

That these answering defendants are informed and believe and so allege that, at the time said proposition was made by said E. T. Barnette and Isabelle Barnette, his wife, the attorneys for the receivers of said bank had prepared a complaint against said E. T. Barnette and some of the other directors of said bank, charging the said E. T. Barnette and said other directors with most, if not all, the alleged wrongful acts contained in plaintiff's amended complaint herein, together with other alleged wrongful acts, and was about to file said complaint with the Court and serve said defendants, for the purpose of recovering from the said E. T. Barnette and other directors of said bank any damages that might have been sustained by the said bank by reason of the said alleged wrongful acts of said E. T. Barnette and the said other directors.

That when said deeds were executed by the said E. T. Barnette and Isabelle Barnette, and were



ordered by said Court to be accepted by the said receivers, it was understood by the said receivers, by the attorney for said receivers, and by said E. T. Barnette that the execution of said deeds, and the delivery thereof, and their acceptance by the said receivers was to be in full settlement of [112] all claims of every nature and description that might then exist against said E. T. Barnette and the other directors by reason of or because of any of the acts and things done and performed by the said directors, including the said E. T. Barnette, during the time of his incumbency in office, and these answering defendants are informed and believe and so allege that said deeds were so accepted as a full release and discharge of all liability of said E. T. Barnette and his codirectors, for any and all alleged wrongful acts and things done or performed from the time of the organization of said corporation, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, until the time of its suspension.

That immediately after the execution of said instrument, as these answering defendants are informed and believe and so allege, said receivers entered into possession of the real property so deeded to them by said E. T. Barnette and Isabelle Barnette, and proceeded to collect all rentals due and to receive all royalties that thereafter became due to said E. T. Barnette from any of the mining claims by him deeded to said receivers, and received and collected all moneys that were due to said Isabelle Barnette as rentals from any of the properties deeded by her to said receivers, and as these answering de-



fendants are informed and believe and so allege said receivers and their successors in interest, to wit, plaintiff in this action, have received from the rentals of the properties as deeded to them and as royalties from the mining claims deeded to them a large sum of money, to wit, upwards of thirty thousand dollars, which said money is now in the possession of said receiver, plaintiff in this action, and subject to be distributed to the creditors of said banking corporation now in the hands of said receiver.

That in said deeds of E. T. Barnette and Isabelle Barnette to the properties in the Fairbanks district, it was also provided that any of said property could be sold at any time on the agreement of [113] said E. T. Barnette and Isabelle Barnette and the said receivers, and as these defendants are informed and believe and so allege, certain property so covered by said transfer has in fact been sold by the receiver and said E. T. Barnette, under and by virtue of the terms of said agreement, and the moneys realized from the sale thereof have been delivered to the receiver, plaintiff in this action, and are now in his hands.

That the properties conveyed by said E. T. Barnette and Isabelle Barnette consisted in improved and income-producing properties, the last situated in the business section of the town of Fairbanks, Alaska, the rental of which is unknown to these answering defendants, but which they are informed and believe and so allege amounts to approximately six hundred dollars a month, and all the property conveyed, did at the time of said conveyance belong to said E. T. Barnette and Isabelle Barnette, and is, as these

answering defendants are informed and believe and so allege worth the sum of not less than one million dollars, and the said sum is greatly in excess of the debts and unpaid liabilities of said bank and was greatly in excess thereof at the time of the institution of this action.

That these answering defendants, are informed and believe and so allege that said deeds were accepted in full accord and satisfaction of all liabilities of said E. T. Barnette as president and director of said bank, from the time of its organization until its suspension, and of his codefendants during the several periods of their incumbency during the periods last above set forth, and was made for the express purpose of preventing the wasting and dissipating of the assets of said corporation in the prosecution of suits for the purpose of attempting to enforce said alleged liability against said directors, including said E. T. Barnette, and against said E. T. Barnette as president of said bank, and was in full accord and satisfaction of all acts and things done and performed by all officers of said bank other than the directors thereof. [114]

That said trust as these answering defendants are informed and believe and so allege has been partially executed and in the event that said receiver has not realized sufficient moneys on the assets of said corporation before the 18th day of November, 1914, to pay all the indebtedness of said corporation, the said E. T. Barnette will pay said remaining indebtedness or will permit said properties deeded in trust, to be sold and the entire proceeds, or so much thereof as

may be necessary, applied in full satisfaction of all outstanding indebtedness and liabilities of said bank, together with interest at the rate of six per centum per annum from the time of the suspension of said bank until said indebtedness is paid in full.

That, as these answering defendants are informed and believe and so allege, at the time of the execution of said trust deeds and the time of the delivery thereof to said receivers, practically the only indebtedness of said bank, other than the indebtedness due to said depositors and the holders of unpaid drafts, was certain claim due to the Dexter Horton National Bank of Seattle, State of Washington, in a sum in excess of one hundred twenty thousand dollars, but that said claim was supposed to be secured by reason that said Dexter Horton National Bank had in its possession, and was claiming that it held as security, all the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, which said stock was then and there recognized by said receivers and the attorney for said receivers and the Court as being of a value greater than sufficient to pay said claim of said Dexter Horton National Bank, and that, if said stock was held as collateral security for said loan, if said pledge was foreclosed, and the said stock of the Gold Bar Lumber Company sold, it would more than pay the indebtedness due to the said Dexter Horton National Bank, and by reason thereof, no reference was made in said trust deed to the indebtedness, other than the indebtedness due to the depositors and to the holders of unpaid drafts.

[115]

That, after the delivery of said trust deeds as aforesaid, the then receivers of said bank abandoned all idea of instituting a suit against said E. T. Barnette or any other directors of said bank, and a suit was instituted by them during the time that they were in office, and it was not until the present receiver, plaintiff in this action, was appointed, that any suits or actions were instituted, and when this action was instituted said E. T. Barnette was not joined as a party defendant and no attempt was made to hold him liable for any of the alleged malfeasances in office.

That since the time of the institution of said action, the said E. T. Barnette has twice at least and for protracted periods been within the Territory of Alaska, and within the jurisdiction of this court and could have been served with process.

That by reason of the acceptance of said deeds by said receivers, the execution thereof, and the receipt of income from the improved income-bearing properties, all of which was, as these answering defendants are informed and believe, and so allege, accepted in full accord and satisfaction of all alleged wrongful acts performed by said E. T. Barnette and other directors of said bank, including these answering defendants, and by reason of the release of said E. T. Barnette as a joint tortfeasor, these answering defendants are released from all liability of every nature and description whatsoever under and by reason of or by virtue of any of the acts or things done or performed while a director of said Fairbanks Banking Company, afterward Washington-Alaska



Bank, as alleged in the said amended complaint of plaintiff herein, or otherwise.

For a further, second separate affirmative answer and by way of defense, these answering defendants allege as follows, to wit:

That these answering defendants do not admit any liability for any act or thing charged against them in plaintiff's said amended complaint, but allege that, during the whole time that these answering defendants were directors of said bank, said E. T. Barnette was likewise a director and was the president of said bank. [116]

That subsequent to the closing of said bank and prior to the institution of this action, said E. T. Barnette and Isabelle Barnette, his wife, for the purpose of settling any liability of said E. T. Barnette and these answering defendants by reason of, or under or by virtue of any acts or things done or performed by said E. T. Barnette or the Board of Directors of said bank, or by these answering defendants during the time that they were directors of said bank, executed and delivered to the receivers of said bank a deed to certain income-producing properties situate in the town of Fairbanks, Alaska, and on the creeks adjacent thereto in the Fairbanks precinct, and paid to them certain moneys from the sale of said properties in the town of Fairbanks, and said receivers have, since said time been paid as rents and the royalties from said properties the sum of more than thirty thousand dollars, as defendants are informed and believe and so allege, which said sum was paid by said E. T. Barnette for the purpose of



settling the alleged liability of these answering defendants and his codirectors by reason of any acts or things done or alleged in plaintiff's said amended complaint to have been wrongfully done by them during the time they were directors of said bank.

That answering defendant, John A. Jesson, alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes, and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant if any exists.

That answering defendant E. R. Peoples alleges that the liability for any of the alleged acts as set forth in said amended [117] complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth was paid, as said defendant is informed and believes, and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant if any exists.

That answering defendant Raymond Brumbaugh alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said

bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant, if any exists.

That answering defendant John A. Clark alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant, if any exists.

That answering defendant George Preston alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant in any exists. [118]

That by reason of the payment in full of all sums

with which these answering defendants could be charged, as set forth in plaintiff's said amended complaint herein, these defendants are discharged from any and all liability and any and all damage occasioned to said bank by reason of any of the alleged wrongful acts and things done and performed by these defendants while a director, and said liability, if any exists, has been paid and settled in full by said E. T. Barnette, who is jointly responsible therefor.

WHEREFORE these answering defendants pray that the plaintiff take nothing by his amended complaint and that they have judgment for their costs incurred herein.

McGOWAN & CLARK,  
Attorneys for Defendants.

A. R. HEILIG,  
Of Counsel for E. R. Peoples.

United States of America,  
Territory of Alaska,—ss.

John A. Clark, George Preston and E. R. Peoples, being first duly sworn, on oath depose and say, each for himself and not one for the other: I am one of the defendants making the foregoing amended answer, and make this verification in behalf of myself and my codefendants; that I have read same, know the contents thereof and the statements therein made are true as I verily believe.

JOHN A. CLARK.  
GEORGE PRESTON.  
E. R. PEOPLES.

Subscribed and sworn to before me this April 21, 1914.

[Seal]

ESTELLE FITTS,

Notary Public in and for the Territory of Alaska.

My commission expires Dec. 23, 1917.

Due service of the within amended answer and receipt of a copy thereof are hereby acknowledged this 21st day of April, 1914.

O. L. RIDER,

Attorney for Plaintiff. [119]

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, etc., Plaintiff, vs. John A. Jesson, et al., Defendants. Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and Geo. Preston. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 21, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [120]

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[Title of Court and Cause.]

**Reply to Separate Answer of R. C. Wood, J. A. Healey and John L. McGinn.**

Comes now the plaintiff and for reply to the last further and separate answer set up in the separate answer of the defendants R. C. Wood, J. A. Healey and John L. McGinn, heretofore filed herein on the 29th day of September, 1913, and says that he denies each and every statement and allegation contained therein, except as hereinafter admitted:

He admits that there was deeded and conveyed to the former receivers herein the property situate in the Republic of Mexico and in Fairbanks Precinct,



Territory of Alaska, and in the incorporated town of Fairbanks, Alaska, therein referred to;

He admits that in said deed of the properties situate in the Territory of Alaska the receiver was given power to collect and receive all rents, royalties and profits therefrom, and he alleges that by the terms of said deed, after deducting reasonable charges for the collection of said rents, royalties and profits and the payment of taxes assessed thereon, insurance and other legitimate expenses connected with the management of said property, the said receivers shall return to this Court and its receivers the net amount of such rents, issues and profits, the same to be disbursed by said Court through its receivers *pro rata* to the depositors and owners of unpaid drafts heretofore issued by said bank, in settlement of any deficit ascertained to exist between the amounts due such depositors and owners of unpaid drafts from said bank on the fifth day of January, 1911, [121] together with six per cent interest thereon from said date and the amount realized out of the property and assets of said bank; and this plaintiff further alleges that the net amount of such rents, issues and profits up to April 1st, 1914, is approximately \$30,458.90, less such reasonable charge as may be allowed for the collection thereof.

This plaintiff further alleges that said deed is in writing and expresses for itself the terms and conditions thereof, the uses and purposes for which it was executed and delivered, and the admissions, agreements and assumed obligations of the said Barnette and his said wife, and this plaintiff has



no knowledge nor information concerning said matters beyond the expressed terms of said deed.

O. L. RIDER,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing reply; I have read said reply, know the contents thereof and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 21st day April, 1914.

[Seal] W. F. WHITELY,  
Notary Public in and for the Territory of Alaska.

My commission expires Aug. 19, 1916.

Service of copy accepted this 21st day of April, 1914.

JOHN L. MCGINN,  
Of Attorney for Defendants.

[Indorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson et al., Defendants. Reply to Separate Answer of R. C. Wood, J. A. Healey and John L. McGinn. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 21, 1914. Angus McBride, Clerk. [122]

[Title of Court and Cause.]

**Motion to Strike Portions of Paragraph 16 of the Amended Answer of the Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston.**

Comes now the plaintiff and moves the Court to strike from paragraph sixteen of the amended answer of the above-named defendants, the following, to wit:

“But deny each and every other matter and thing therein contained, and specifically deny the allegations therein contained that ‘said F. G. Noyes thereupon duly qualified as such receiver, and ever since has been and now is the duly qualified and acting receiver of the Washington-Alaska Bank,’ ” for the following reasons to wit:

1st. Because the same is irrelevant and redundant;

2d. Because the issues on said paragraph have been fully joined, before the filing of said amended answer, upon the amended petition and separate verified answers of said defendants, and in said separate verified answers the matters above referred to as denied were expressly admitted:

3d. Because said amended answer containing the denial above referred to was not filed until the day the aforesaid cause was to come on for trial:

4th. Because the question of whether or not F. G. Noyes ever duly qualified as Receiver cannot be inter-

posed as a defense to this action.

O. L. RIDER,

Attorney for Receiver.

Service of copy accepted this 22d day of April,  
1914.

McGOWAN & CLARK and

A. R. HEILIG,

Attorney for Defendants. [123]

[Indorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson et al., Defendants. Motion to Strike Portions of Paragraph 16 of the Amended Answer of Defendants, John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [124]

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[Title of Court and Cause.]

**Order Allowing Motion to Strike Portions of  
Paragraph 16 of Amended Answer.**

Now on this day came on for hearing plaintiff's motion to strike portion of paragraph 16, of the amended answer of John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston filed herein; O. L. Rider appearing for and in behalf of plaintiff, and John A. Clark appearing for and in behalf of defendants; after argument thereon by the respective at-

torneys, and the Court being duly and fully advised in the premises,

IT IS ORDERED that said motion be, and the same is hereby allowed.

F. E. FULLER,  
District Judge. [125]

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[Title of Court and Cause.]

**Reply to Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston.**

FIRST.

Comes now the plaintiff and for reply to the amended answer of the above-named defendants says that he denies each and every allegation and statement of new matter therein contained except those hereinafter specifically admitted.

SECOND.

For reply to the first and separate answer of said defendants he denies each and every allegation therein contained, except those hereinafter expressly admitted or otherwise denied.

He admits that E. T. Barnette was a member of the Board of Directors and president of the Fairbanks Banking Company, a corporation, as stated, and that he was thoroughly conversant with the affairs of said bank.

He admits that the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation at \$341,949.00 and that the same was

one of the principal assets of said bank; that the same was originally purchased by the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, James W. Hill and R. C. Wood. As to whether or not the said Barnette was at all times familiar with the affairs of the said Gold Bar Lumber Company, a corporation, and with the value of its properties, and the extent and variety of its assets, the amount of its [126] liabilities, and knew the value of its stock, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the said Barnette was actively engaged in mining in the Fairbanks precinct during the time he was a director and president of the Fairbanks Banking Company, a corporation, and was familiar with the financial standing and moral responsibility of the majority of the men who were carrying on mining operations or engaged in business in said Fairbanks district, but as to whether or not he passed on and gave his judgment on most of the loans that were made during the time he was president of said bank, while in the Territory of Alaska, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that with the exception of two other directors, the said Barnette is the only director who was director from the time of the organization of said bank until its close, and that he was recognized by the public at large as a man of wealth, and that a great deal of the business of said bank was acquired by reason of personal friendship between depositors and other persons doing business with said



bank and the said Barnette. As to whether or not the said Barnette alone of all the directors had personally visited the properties of the said Gold Bar Lumber Company and had first hand knowledge of their value and condition, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that none of the other directors of said bank received a salary as directors, and alleges that said Barnette received no salary as director. Admits that said other directors were engaged in other lines of business, and alleges that the said Barnette was also. As to whether or not the said Barnette was the only one in a position to devote any considerable portion of his time to the affairs of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that said Barnette had an office in said bank, and that the officers and employees of said bank were subject to receive orders from him within the limits prescribed by the [127] by-laws of said bank, and that the books, records, loans, notes and discounts of said bank were readily accessible to him, and that the affairs of said bank were thoroughly understood by him. He alleges that said books, records, loans, notes and discounts were also readily accessible to any other officers or directors of said bank.

He admits that the said Barnette was not in the Territory of Alaska at the time of the suspension of said bank, and that in the month of February, 1911, and after he had been advised that said bank had suspended and receivers appointed therefor, he

returned to Fairbanks. As to any negotiations between the said Barnette and the then receivers of said bank, or the purpose thereof, or as to any proposition made by said Barnette to said receivers, or as to any promise or agreements made by the said Barnette to said receivers, other than as the same are evidenced by the deeds of trust referred to in said first separate and affirmative answer, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the execution by said Barnette and the delivery to said former receivers of said bank of the deed of trust to property situate in the Republic of Mexico and set out in said first separate and affirmative answer of said defendants for the purposes specified in said deed of trust, and admits that the plaintiff has a copy of the same.

He admits the execution by said Barnette and wife, and the delivery to said receivers of a certain deed of trust to the real property therein described situate in Fairbanks Precinct, Alaska, upon the terms and conditions and for the uses and purposes set forth in said deed of trust.

He admits that the said Isabelle Barnette was never a director of said bank and in no way liable for any of its said indebtedness. As to the reason why she joined her husband in said deed of trust and in said petition to the Court, this plaintiff has neither knowledge nor information sufficient to form a belief. [128]

This plaintiff alleges that said deeds of trust are in writing and express for themselves the terms and

conditions thereof, the uses and purposes for which they were executed and delivered, and the admissions, agreements and assumed obligations of the said Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the express terms of said deeds.

He admits that the Judge of the District Court for the Fourth Judicial Division of Alaska at that time, referred the application of the said Barnette and wife for the acceptance of said deeds of trust to the then receivers for their consideration.

He admits that thereafter said Judge in writing authorized said receivers to receive said deeds and enter into possession of the properties situate in Fairbanks precinct.

As to whether or not the attorneys for the then receivers had prepared a complaint against said Barnette and the other directors of said bank at the time the proposition of the said Barnette and wife was made, charging the alleged wrongful acts contained in plaintiff's complaint on the grounds and for the purposes set forth in said answer, and were about to file the same with the Court and serve said defendants, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the said former receivers entered into the possession of the real property in the Fairbanks precinct and proceeded to collect the rentals and royalties therefrom, and that there has been received by said receivers and their successor in office, this plaintiff, from the rentals and royalties on said property a large sum of money, the gross amount is

upwards of \$30,000.00 as stated, which he is holding subject to the terms and conditions of said trust deed.

This plaintiff further admits that in the deed of the said Barnette and wife to the property in said Fairbanks district, it is provided that any of said property could be sold at any time on the agreement of the said Barnette and wife and said receiver, [129] and he admits that certain property covered by said transfer has been sold by the receiver and said Barnette and wife under and by virtue of the terms of said agreement and that the money realized from said sale has been delivered to said receiver. Plaintiff alleges that said money so received amounts to \$2500.00 which he is holding subject to the terms and conditions of said trust deed.

He admits that the property conveyed by the said Barnette and wife in said Fairbanks precinct consists of improved and income-producing properties, the last of which is situate in the business section of Fairbanks, Alaska, and he alleges that the rentals therefrom aggregate approximately \$450.00 per month at this time.

He admits that the said trust deed has been partially executed to the extent above set forth, but as to what the attitude of the said Barnette will be in the matter of the indebtedness of said corporation in the event sufficient money has not been realized on the assets of said corporation before November 18th, 1914, to pay all of the indebtedness of said corporation, or what his attitude will be in the matter of a sale of said property, or so much thereof as may be necessary in satisfaction of all outstanding indebted-



ness and liabilities of said bank, together with interest thereon as alleged, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that at the time of the execution and delivery of said trust deeds there was other indebtedness of said bank than the indebtedness due to depositors and holders of unpaid drafts, among which was the claim of Dexter Horton National Bank for a sum in excess of \$120,000.00 as alleged, to secure which, the said Dexter Horton National Bank claimed a lien upon the stock of the Gold Bar Lumber Company belonging to said bank and which [130] was then in the possession of the said Dexter Horton National Bank; but as to whether or not said stock was recognized by the then receivers and the attorneys for said receivers and the Court, as being of a value greater than sufficient to pay said claim of said Dexter Horton National Bank, and that if said stock was sold under foreclosure of the pledge claimed thereon it would pay the indebtedness of the said Dexter Horton National Bank, and for that reason no reference to indebtedness was made in said trust deeds other than the indebtedness due to depositors and holders of unpaid drafts, this plaintiff has neither knowledge nor information sufficient to form a belief.

He alleges that since said time the said Dexter Horton National Bank has instituted a suit for the foreclosure of the pledge claimed by it on said stock and has recovered a judgment establishing said lien and ordering sale of said stock in satisfaction of the same; that said sale under said judgment has been had and



said stock bid in thereat by said Dexter Horton National Bank for \$100,000.00, and unless the same is reversed or set aside on appeal said judgment and sale will become final.

As to whether or not the former receivers, after the delivery of said trust deeds, abandoned all idea of instituting a suit against said Barnette or any other director of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief. He admits that no suit was instituted by them, as stated, and that no suit was instituted against said directors until after the appointment of the present receiver, this plaintiff. He alleges that in the institution and prosecution of this suit he is acting under order of Court; he admits that the said Barnette was not joined as a party defendant in this action, and he alleges that the reason therefor is that the acceptance of said trust deeds operated as an agreement not to sue said Barnette prior to November 18th, 1914.

[131]

He admits that since the institution of this suit the said Barnette has been within the jurisdiction of this Court as stated and could have been served with process, but he alleges that he was not served in this suit for the reason that he was not a party thereto.

### THIRD.

For reply to the second separate affirmative answer of the above-named defendants, plaintiff says that he denies each and every statement and allegation therein contained, except as hereinafter admitted:

He admits that during the whole time said defendants were directors of said bank, the said E. T. Bar-

nette was likewise a director and was president of said bank:

He admits that subsequent to the closing of said bank and prior to the institution of this action the said E. T. Barnette and Isabelle Barnette his wife, executed and delivered to the receivers of said bank a deed to certain income-producing properties situate in the town of Fairbanks, Alaska, and that said receivers have received certain monies from the sale of certain of said properties in the town of Fairbanks, Alaska, which amount this plaintiff alleges to be \$2,500.00;

Plaintiff further admits that said receivers since said date have received the rent from said properties but he alleges that the gross income thereof up to April 1st, 1914, does not exceed \$20,606, out of which he has paid up to April 1st, 1914, expense incident to the care of said properties, approximately, \$1457.32.

This plaintiff further alleges that said deed of trust is in writing and expresses for itself the terms and conditions thereof, the uses and purposes for which it was executed and delivered and the admissions, agreement and assumed obligations of the said E. T. Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the expressed terms of said deed.

O. L. RIDER.

Attorney for Plaintiff. [132]

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing

reply; I have read said reply, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to *before this* 22d day of April, 1914.

[Seal]

L. D. BENNETT,

Notary Public in and for the Territory of Alaska.

My commission expires June 24, 1916.

Service of copy accepted this 22d day of April, 1914.

McGOWAN & CLARK,

Attorneys for Defendants.

[Indorsed]: No. 1756. In the District Court, Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson et al., Defendants. Reply to Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [133]

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[Title of Court and Cause.]

**Findings of Fact and Conclusions of Law.**

BE IT REMEMBERED that on the 22d day of April, A. D. 1914, the above-entitled cause came on for trial before the Court without a jury upon the issues as joined between the plaintiff and the defendants, the Honorable F. E. Fuller, Judge of said court, presiding; the plaintiff appearing in person and by his attorney O. L. Rider; the defendants ap-

pearing in person and by their attorneys John L. McGinn, John A. Clark and A. R. Heilig, and thereupon the respective parties plaintiff and defendants, from day to day, introduced their testimony in support of said issues until the 6th day of May, 1914, when all parties rested and the introduction of said testimony was closed.

And thereupon the Court, after hearing the allegations, testimony and proofs of the respective parties, and the arguments of counsel, and being fully advised in the premises, does hereby make and file, as constituting its decision in said cause, the following Findings of Fact and Conclusions of Law.

### I.

That the Washington-Alaska Bank, of which the plaintiff is receiver, was incorporated under the laws of the State of Nevada on the 21 day of January, 1908, with an authorized capital stock of \$300,000.00, divided into 3,000 shares of the par value of \$100.00 each; that said bank was incorporated under the name of the Fairbanks Banking Company; and that [134] subsequently, by amendment to its Articles of Incorporation, said name was changed to Washington-Alaska Bank.

### II.

That said bank commenced business in the town of Fairbanks, Alaska, on the 16 day of March, 1908, with a subscribed capital of \$206,000.00, part of which was paid for in cash, part in property, and the balance by the promissory notes of the subscribers.

### III.

That prior to the 21 day of January, 1908, sub-

scriptions for said capital stock was circulated, and the following persons, among others, subscribed for shares thereof, to wit, E. T. Barnette, 440 shares, R. C. Wood, 220 shares, James W. Hill, 220 shares; the name of R. C. Wood being subscribed thereto by said E. T. Barnette.

#### IV.

That prior to the incorporation of said bank, the said Barnette, Hill and Wood, as copartners were conducting a banking business in said town of Fairbanks under the firm name and style of Fairbanks Banking Company, which said company in December, 1907, owing to financial difficulties, was unable to meet its obligations and was compelled to suspend business and close its doors, and was, at the time of the organization of said corporation, in the hands of trustees.

#### V.

That said corporation was organized, among other things, for the purpose of taking over the business and affairs of said partnership and assuming its outstanding obligations.

#### VI.

That the capital of said partnership was \$200,000.00 which belonged to said Barnette, and the agreement existing between said partners was that the profits of said partnership were to be divided, one-half to said Barnette, and one-fourth each to said Hill and Wood.

#### VII.

That thereafter, and in the fore part of January, 1908, a large number of business, professional and



mining men of the [135] Fairbanks recording district, Alaska, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase and take over and absorb the business of the Fairbanks Banking Company, a partnership, and at said meeting negotiations were begun by said proposed incorporators, with said copartnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets.

#### VIII.

That said committee met on the 5th day of January, 1908, and, after investigating the affairs of the bank, made the following report to be presented for the consideration of the proposed new corporation:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person

be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its liabilities was placed, be accepted.

(e) That all notes, properties and securities which said board of trustees placed in the No. 3, or doubtful class remain [136] the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30 and December 31.

#### IX.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read, and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting. [137]

#### X.

That at said meeting a subscription list, a copy of which is set forth in paragraph 3 of the amended complaint in this cause, was presented and signed by said proposed incorporators, setting forth the amount for which each respectively subscribed.

#### XI.

That at said meeting it was also agreed on behalf of the Fairbanks Banking Company, a copartnership, that said partnership would turn over to said corporation the property of said Fairbanks Banking Company, a partnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration

thereof, agreed to assume the liabilities of said partnership.

## XII.

That said Fairbanks Banking Company, a corporation, became such on the 21st day of January, 1908. That on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining notes of the subscribers for the stock subscribed by them, and, at said meeting, said stock notes were subscribed by said subscribers of stock and delivered to said corporation.

That at the time of said meeting the Articles of Incorporation of said Fairbanks Banking Company had not been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the Articles of Incorporation, when a formal meeting would be held and proper by-laws be adopted.

## XIII.

That said Articles of Incorporation did not arrive in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the [138] Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect that the matter of taking



over the property of the Fairbanks Banking Company, a partnership, be left to the Board of Directors.

That on the 12th day of March, 1908, at said meeting of the subscribers to said capital stock, said subscriptions were accepted by them and the above-named Barnette, Hill and Wood, together with the other subscribers, were declared to be stockholders of the said corporation. The defendant Wood was not present at said meeting, but he was notified of the result of the same by the defendant Hill.

#### XIV.

Subsequently, at a meeting of the stockholders of said corporation it was resolved that the matter of taking over the business and affairs of said partnership be left to the Board of Directors. Thereafter, on March 12, 1908, at a meeting of the Board of Directors, said matter was considered by them and the resolutions of the proposed stockholders, set out in Finding VIII hereof, were by said directors adopted and approved, except that the resolution providing for the payment of accrued interest up to February 15, 1908, was by them amended so as to read "March 15, 1908." At the same meeting it was ordered by said Board of Directors that stock issue to said Barnette, Hill and Wood in exchange for the property received from them by said corporation as follows: Barnette 440 shares; Hill 220 shares; Wood 220 shares.

#### XV.

That on the 16th day of March, 1908, a written agreement was entered into between said corporation and said partners, and on the same day the same was



signed by the said Barnette and Hill, and also on behalf of said bank by its president and secretary, wherein the valuation of the resources of said partnership was fixed at \$790,940.31 and its liabilities at \$538,940.31, leaving an excess of [139] \$252,000.00 belonging to the said Barnette, Hill and Wood, in which said agreement the said Barnette, Hill and Wood agreed to accept stock of the corporation at its par value for the amount of assets in excess of said liabilities, except that \$200,000 thereof should be placed to the credit of the said Barnette as a special deposit with said corporation upon the terms therein stated. By the terms of said agreement the amount of stock to be issued to Barnette, Hill and Wood, was fixed at \$52,000.00 instead of \$88,000.00 as contemplated by said resolution and subscription, thus entitling Barnette to 260 shares and Wood and Hill each to 130 shares, a copy of said agreement is annexed to plaintiff's complaint and marked "Exhibit One."

## XVI.

That at the time said agreement was entered into, the said Barnette was president of the said corporation and also a member of the Board of Directors, the said Hill was a member of its executive committee and also its vice-president, and the said Wood was its cashier, and the said defendant John A. Jesson was a member of its Board of Directors. That the above-named Wood, Hill and Jesson are all of the officers of the said bank at the time said agreement was entered into upon whom services has been made in this case, and who are now before the court as defendants.

## XVII.

That the matter of preparing the papers for the transfer of said property belonging to said partnership to said corporation was, by the Board of Directors, left to the executive committee, and the said executive committee examined the affairs of said partnership, and, under their direction, said written agreement was prepared and afterward submitted to the Board of Directors for approval, and by them approved.

## XVIII.

That according to the by-laws of said corporation, the said executive committee had the same powers as the Board of Directors, subject to approval of their acts by said Board of Directors. [140]

## XIX.

That at the time said written agreement was signed and executed, and during all of the negotiations leading up to the making of the same, the defendant Wood was in Seattle, Washington, but he was advised fully concerning the same by the defendant Hill by letter and by telegram.

## XX.

That prior to the return of said Wood to Fairbanks, to wit, on the 29th day of February, 1908, he offered to sell his stock in said corporation and to take in payment therefor part cash and a note for the balance, to be secured by said stock as collateral security.

## XXI.

That the defendant Wood returned to Fairbanks sometime in the month of April, 1908, and, upon his

return, he signed said written agreement so entered into as aforesaid, knowing that the same contained said clause requiring him to take stock for his share of the assets of said partnership so transferred to said corporation in excess of the liabilities thereof as aforesaid, and also knowing that the same did not provide for the payment of said accrued interest.

## XXII.

That of the loans and discounts transferred by said partnership to said corporation a large amount were then past due, of which the part due paper the sum of \$69,908.94 now remains in the hands of the receiver unpaid and uncollectible, which said loans and discounts were accepted by the directors of said corporation at their face value, and the same were included in those on which the accrued interest referred to in said resolution was afterward computed.

## XXIII.

That of said notes so past due as aforesaid, there were two executed by the Tanana Electric Company in the sum of \$27,997.38 [141] which depended for their value upon the existence of an alleged guaranty of the Scandinavian-American Bank to make advancements sufficient to cover the same; that said alleged guaranty never had any existence in fact, and the claim therefor had been repudiated by said Scandinavian-American Bank prior to the time said note was accepted by said Board of Directors, and said repudiation was known to the members of said board. That said notes are still unpaid, and the same was at all times carried on the books of the said Washington-Alaska Bank, formerly Fairbanks Banking Com-

pany, as an asset in the sum of \$27,997.38.

#### XXIV.

That said Board of Directors and the officers of said bank accepted said notes of the Tanana Electric Company and paid therefor the sum of \$27,997.38, with knowledge on the part of each of them that the same depended for their value upon said alleged guaranty alone.

#### XXV.

That among the other assets of said partnership so accepted by said officers and directors was four-fifths of the capital stock of the Gold Bar Lumber Company, a corporation existing in the State of Washington, which said stock was accepted and paid for at the valuation of \$341.949.00, and said stock was at all times during the existence of said corporation carried as an asset in said sum.

#### XXVI.

That at the first meeting of the Board of Directors, held on the 12th day of March, 1908, the defendant Wood was elected Cashier of said bank, at which time he was then in the said City of Seattle, Washington, as aforesaid. Immediate notice was given to him of said election.

#### XXVII.

That the said Wood accepted said office of cashier while in the said City of Seattle, and, on the 16th day of March, 1908, entered upon the discharge of his duties as such cashier, and, upon his return to said Fairbanks in April, 1908, as aforesaid, entered [142] actively upon such duties and continued to so act until June 29, 1908, when he tendered his resig-

nation as such cashier, and the same was accepted by the Board of Directors to be effective at the close of business on June 30, 1908, and one B. R. Dusenbury, who was then assistant cashier, was elected to succeed Wood as cashier.

### XXVIII.

That at the time said Wood tendered his resignation as cashier as aforesaid, he demanded that there be paid to him the amount of his interest in said partnership assets, to wit, \$13,000.

### XXIX.

That a certificate for 130 shares of the capital stock of said corporation had been written up in the name of the defendant Wood, of the par value of \$13,000, but the same was never detached from the stock book. That said 130 shares were carried on the books of said bank as outstanding stock from March 16, 1908, to June 30, 1908.

### XXX.

That on the 30 day of June, 1908, with the knowledge, consent, and approval of the officers and directors of said bank a certificate of deposit was issued to and accepted by the said Wood in the sum of \$13,000, in lieu of said stock, which said certificate was signed by the said B. R. Dusenbury as assistant cashier prior to when the said resignation of the said Wood, as cashier became effective, and said shares of capital stock were on the same day charged to treasury stock on the books of said bank.

### XXXI.

That subsequently the said Wood drew out in cash from the funds of said bank the amount of the said



certificate of deposit, to wit, \$13,000.

### XXXII.

That at the time the said certificate of deposit was issued to said Wood there was in effect a resolution of the said board of directors requiring monthly statements, showing the condition of said bank, to be presented to said Board of Directors and that [143] in accordance with said resolution, there was, during the existence of said bank, presented to said Board of Directors at each monthly meeting thereafter a statement showing the condition of said bank, and said statements were examined in detail by said board and by them ordered filed.

### XXXIII.

That there was submitted to said Board of Directors at its meeting on July 13, 1908, a written report in detail showing the condition of the affairs of said bank, which said report was examined in detail and was ordered filed, and, under the question of this report, the question of refunding to those desirous of giving up their stock in the Fairbanks Banking Company was discussed, and it was the sense of the meeting that any stockholder desirous of giving up the stock, be paid for the same, and the stock returned to the treasury of said bank.

### XXXIV.

That at the time the said certificate of deposit was issued to said Wood, and his shares of stock so charged to treasury stock as aforesaid, the following of the defendants now before the Court in this action were among its officers, to wit, James W. Hill, a member of the executive committee and its vice-

president, John A. Jesson, a member of the Board of Directors, R. C. Wood, cashier and a member of its executive committee; and, at said meeting of July 13, 1908, at the time said report was submitted and the sense of said meeting was expressed as aforesaid, the said John A. Jesson was present and participated therein as a member of the Board of Directors, and the said James W. Hill was also present as its vice-president and a member of the executive committee.

### XXXV.

That of the notes accepted from said partnership as aforesaid and paid for by said corporation, there were charged on December 31, 1907, by said partnership on the books of said partnership to [144] an account known as "doubtful account" the sum of \$22,979.99 and said doubtful account, so including said notes in said amount, was then depreciated on the said books to the amount of thirty-three and one-third per cent thereof, which said notes were accepted by said corporation and paid for by them in the amount aforesaid, to wit, \$22,979.99, all of which said notes were then past due, and of which there still remains unpaid and uncollectible the sum of \$12,860.-61. That of said notes so charged to said doubtful account as aforesaid, there was on December 31, 1909, charge by said corporation to the account of profit and loss on the books of said corporation the sum of \$12,192.80.

### XXXVI.

That on March 23, 1908, pursuant to said resolution of the said board of directors adopted on March 12, 1908, the accrued interest on said loans so trans-

ferred to said corporation was computed to March 15, 1908, in the sum of \$39,642.81, and one-half thereof was placed to the credit of said Barnette, and one-fourth thereof each to the credit of said Hill and Wood on the books of said corporation, and subsequently the same was paid to said Barnette, Hill and Wood in cash.

### XXXVII.

That of said interest so paid to said Barnette, Hill and Wood as aforesaid, approximately \$7500.00 thereof was never collected by said bank.

### XXXVIII.

That at the time said resolution allowing said interest was adopted, and at the time the amount thereof as aforesaid was placed to the credit of said Barnette, Hill and Wood as aforesaid, on the books of the said bank, the following defendants now before the Court in this action were officers of said bank, to wit, [145] John A. Jesson, member of the board of directors, James W. Hill member of the executive committee and vice-president, and R. C. Wood, cashier.

### XXXIX.

That at the time said corporation commenced business on March 16, 1908, it had a total subscribed and outstanding capital stock in the sum of \$206,000.00, only a small portion of which was paid for in cash, and at no time did the same exceed said amount; and that of its funds \$341,949.00 was at all times invested in stock of the Gold Bar Lumber Company, being \$135,949, in excess of its subscribed and outstanding stock.

## XL.

That at the time said investment was so made as aforesaid, said Lumber Company was closed down, and immediately prior to closing down, it has been operated at a loss, that in so far as said Lumber Company was able to operate since the purchase of said stock by said corporation, all of its earnings and a part of its surplus have been expended in the purchase and repair of equipment for said mill, and in the operation of said mill its standing timber was being consumed and its best asset exhausted. That no dividends have ever been paid on the capital stock of said lumber company during the time the same was owned by said bank.

## XLI.

That the Articles of Incorporation of said corporation authorized and empowered said corporation among other things,

To buy and sell gold and silver bullion, foreign coin, stocks, bonds, and all other property, real and personal, and to do any business and exercise any powers incident to the banking business, or necessary or proper to the furtherance and attainment of the purposes of said bank.

## XLII.

That subdivisions 5 and 6 of Articles XII of the by-laws of said corporation, adopted at the stockholders meeting held March 12, 1908, provided that all issued and outstanding stock of the company that may be donated to, or purchased by the company, or [146] which shall revert by reason of failure to pay for the same, shall be treasury stock, and shall be held

subject to the disposal of the action of the Board of Directors. Said stock shall neither vote nor participate in dividends while held by the company. The Board of Directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same provided said Board of Directors shall offer to pay to said stockholder the same amount as he might obtain from any other person.

#### XLIII.

That on the 14th day of September, 1908, the executive committee of the said Fairbanks Banking Company, consisting of Barnette, president, Hill, vice-president, Dusenbury, cashier, and directors Jonas, John Jesson and Ryan, passed a resolution to the effect that said corporation would not take over any more stock of the stockholders, which said resolution of the executive committee was approved and ratified by the board of directors on October 14, 1908, the directors present at said meeting being, Hill, Peoples, Yarnell, Robinson, Ryan, Jonas, and Jesson, and also the said Dusenbury was present.

#### XLIV.

That after said bank took said stock of said Wood into its treasury, frequent and continuous surrenders of its stock were made by its stockholders, amounting in all to thirty-eight different and distinct transactions, aggregating a total of \$43,000, exclusive of said Wood's stock. That the stock so taken back by the corporation was charged to the treasury stock account, and of the same only ten shares of the par value of \$1000 were ever re-issued. That said stock



surrenders continued down to and including October 25, 1910, when the last surrender was made, being the McGinn stock of the par value of \$10,000, for which the sum of \$6000 in case was paid by the bank to said McGinn. [147]

#### XLV.

That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares.

That said stock was taken in part payment of a loan that the bank had theretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of \$4,000 in cash, which fully paid said loan. That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the Board of Directors. That said directors believed at said time said loan was precarious, and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and believing it to be for the best interests of the corporation.

#### XLVI.

That on the 3d day of February, 1909, at a meeting of the executive committee of said bank, it was again resolved that the officers of said bank be directed to say that "the corporation did not desire to buy in its stock at present," which said resolution of the said executive committee was thereafter and on to wit, the 13th day of February, 1909, approved and reti-

fied by the said board of directors.

#### XLVII.

That on the 15th day of March, 1909, H. B. Parkin, who was the owner of 10 shares of the outstanding capital stock of said bank, and Oscar Tackstrom, who was the owner of 5 shares of the said outstanding capital stock, requested the executive committee of said bank to buy their stock.

That said executive committee thereupon again announced its policy, by resolving "It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was declared not to buy in any more stock," which [148] said resolution was approved and ratified by the board of directors at said meeting held April 12, 1909, at which meeting of the directors the following officers and directors were present; Barnette, Claypool, Hill, Jesson, Robinson, Yarnell, Brumbaugh, Peoples and Dusenbury.

#### XLVIII.

That John L. McGinn was a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and was the owner of 100 shares of the outstanding capital stock of said Washington-Alaska Bank, of the par value of \$10,000.

#### XLIX.

That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, demanded the right to inspect its books and papers, and threatened that, unless this right was granted him immediately, to make application for an

order permitting him to do so and for the appointment of a receiver of the said Washington-Alaska Bank. That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair public confidence in the Washington-Alaska Bank and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of \$6000, but it would be necessary for him to borrow money to complete said purchase; that, as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount [149] thereof and paid to said John L. McGinn the sum of \$6,000.00 for his 100 shares of capital stock. That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered the stock to the bank, and the stock was thereafter held, with other treasury stock of the company.

L.

That upon said 13th day of October, 1910, the director George Preston, by reason of sickness of his family, was quarantined and unable to attend the

meeting of the Board of Directors held on said day, and was not present thereat, and knew nothing of the action taken at the meeting of said board.

LI.

That when stock was so taken back by the corporation, the amount paid therefor was either paid in cash, or notes held by the bank were cancelled and surrendered to the stockholders.

That said bank had no surplus or undivided profits against which the same could be charged.

LII.

That the taking back of said stock and the payment therefor as aforesaid was illegal, wrongful, and in violation of the laws of the State of Nevada under which said corporation was organized.

LIII.

That after the surrender of the stock of the said Wood, to wit, from July 13, 1908 to and including September 12, 1908, stock was so taken up in the sum of \$13,400.00, during which time the defendant John A. Jesson was a member of the board of directors, and the defendants James W. Hill a member of its said executive committee.

That from September 13, 1908 to and including October 13, 1908, [150] stock was so taken up in the sum of \$1500.00 during which time the defendants John A. Jesson and James W. Hill were members of the Board of Directors;

That from October 14, 1908 to and including March 13, 1909, stock was so taken up in the sum of \$13,100.00, during which time the defendants Jesson, Hill and Peoples were members of the Board of Directors;



That from the 14 of March, 1909, to and including September 12, 1909, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh were members of the Board of Directors;

That from September 13, 1909, to and including October 12, 1909, stock was so taken up in the sum of \$3000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh and McGinn were members of the Board of Directors.

That from October 13, 1909, to and including January 18, 1910, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill, McGinn and Brumbaugh and Wood were members of the Board of Directors;

That from January 19, 1910, to and including October 25, 1910, stock was so taken up in the sum of \$10,000, for which the said sum of \$6,000.00 was paid in cash, and at the time said stock was so taken up the defendants John A. Jesson, Brumbaugh, Clark, Healey and Preston were members of its Board of Directors.

#### LIV.

That said stock surrenders so made as aforesaid were acquiesced in by said directors, and in some instances were made under their directions and with their express approval.

#### LV.

That in the month of May, 1909, said Fairbanks Banking Company and the Washington-Alaska Bank of Washington, then doing business at Fairbanks, each purchased one-half of the capital stock of



[151] the First National Bank of Fairbanks, Alaska, for which each paid the sum of \$62,500.00 and continued to own and hold said stock until the month of May, 1910.

That on or about the 4th of May, 1910, said Fairbanks Banking Company sold the entire capital stock of the said First National Bank to the defendants Wood and McGinn for the sum of \$125,000.00 and received said amount in payment therefor, delivering to them the said capital stock of said First National Bank.

That at the time said banks purchased said stock of the First National Bank, they gave to said Wood an option to purchase the same on or before June 1, 1910 for the sum of \$125,000.00, and said sale to said Wood and McGinn was made in pursuance to said option.

That neither the said Fairbanks Banking Company, nor the said Washington-Alaska Bank of Washington, received any dividend on said stock of the said First National Bank during the time the same was held and owned by them, nor did they, or either of them, receive any interest from the said Wood and McGinn, or from anyone in their behalf, for the money invested in said stock during the time the same was so invested.

#### LVI.

That on September 14, 1909, the said Fairbanks Banking Company purchased the entire capital stock of the said Washington-Alaska Bank of Washington, paying therefor the sum of \$250,000.00,

which said capital stock at said time was of the par value of \$150,000.

LVII.

That at the time the said capital stock of said Washington-Alaska Bank of Washington was so purchased, the defendants J. A. Jesson, James W. Hill and John L. McGinn were members of the Board of Directors of the Fairbanks Banking Company, and said purchase of said capital stock was ratified and confirmed by them as members of said board on the said 14 day of September, 1909. [152]

That at the time the aforesaid resolution was adopted by the said board of directors to take over the business and affairs of said partnership; and at the time said written agreement between said corporation and said partners was entered into and confirmed and approved; and at the time said valuation was placed on said capital stock of the said Gold Bar Lumber Company and said stock accepted at such valuation; and at the time said past due notes held by said partners were accepted and paid for by said corporation, including said notes of the said Tanana Electric Company and said notes which had been charged to the doubtful account of said partnership as aforesaid; and at the time said accrued interest on said notes so purchased of said partnership was computed and allowed to said partners and placed to their credit as aforesaid on the books of said corporation, the following defendants now before the Court in this action were officers and directors of said corporation and acquiesced in said transactions and gave their consent thereto with full

knowledge on the part of each of them of the existence of the facts heretofore found respecting said transactions, to wit, James W. Hill, vice-president and member of its executive committee, John A. Jesson, member of its board of directors, R. C. Wood, its cashier. That the said Hill and Wood were also members of the partnership with which said corporation contracted respecting said matters and were each personally interested therein adversely to said corporation.

*LIX.*

That at the time of the said sale of the said capital stock of the said First National Bank to the said Wood and McGinn, the following defendants now before this Court were officers and directors of the said Fairbanks Banking Company, and each consented to said sale on the terms thereof heretofore stated, to wit, J. A. Jesson, R. C. Wood, John L. McGinn and Ray Brumbaugh.

*LX.*

That on the 12 day of April, 1910, the said Fairbanks Banking [153] Company, by its board of Directors, declared a dividend of twenty per cent on its then outstanding capital stock of \$168,600, which dividend amounted to \$33,720.00, and which said sum was paid to the stockholders of said bank either in cash or by crediting the amount thereof upon notes owing by said stockholders to said bank.

*LXI.*

That at the time said dividend was so declared and paid, the said Fairbanks Banking Company did not have any surplus or undivided profits out of which

the same could be declared and paid.

### LXII.

That said dividend was declared and paid in violation of the laws of the State of Nevada, and also in violation of the by-laws of the said Fairbanks Banking Company, and was wrongful and illegal.

### LXIII.

That at the time said dividend was declared and paid, the defendants Wood, McGinn, Brumbaugh and John A. Jesson were members of the board of directors of the said Fairbanks Banking Company, and gave their consent thereto.

### LXIV.

That on the 1st day of October, 1910, the said Fairbanks Banking Company and the said Washington-Alaska Bank of Washington combined, at which time the said Fairbanks Banking Company took over the assets of the said Washington-Alaska Bank of Washington and assumed and agreed to pay its outstanding liabilities; and thereafter the said Washington-Alaska Bank of Washington ceased to exist or do business as a bank, and the Fairbanks Banking Company, by amendment to its Articles of Incorporation, changed its name to Washington-Alaska Bank of Nevada, and continued thereafter to transact business under said name at said Fairbanks, Alaska, until the appointment of the receiver therefor.

### LXV.

That pursuant to the agreement heretofore referred to between [154] the said Fairbanks Banking Company and the said partnership formerly existing between the said Barnette, Hill and Wood, the



said sum of \$200,000.00 to be paid to said Barnette was placed to his credit on the books of said corporation as a special deposit, and subsequently the entire sum thereof was paid to said Barnette in case and drawn out by him from the funds of said bank.

### LXVI.

That the assets of the said bank now in the hands of the receiver are insufficient to pay its liabilities and the amount of such liabilities is more than \$470,000.00 in excess of the value of said assets.

### Conclusions of Law.

Upon the foregoing findings of fact, the Court finds as conclusions of law:

1. That the defendants Wood, McGinn, Brumbaugh and Jesson are jointly and severally liable in the sum of \$33,720.00, by reason of the declaration and payment of the dividend upon the capital stock of the Fairbanks Banking Company on April 12, 1910;
2. That the defendant Jesson is liable in the sum of \$13,400.00 by reason of the surrender of shares of capital stock of said company, made between July 13, 1908, and September 12, 1908;
3. That the defendants Jesson and Hill are jointly and severally liable in the sum of \$1,500.00, for surrender of shares of capital stock of said Company, made between September 13, 1908, and October 13, 1908;
4. That the defendants Jesson, Hill, and Peoples are jointly and severally liable in the sum of \$1100.00, for surrenders of shares of capital stock,



made between October 14, 1908, and March 13, 1909;  
[155]

5. That the defendants Jesson, Hill and Brumbaugh are jointly and severally liable in the sum of \$1100.00, for surrenders of shares of capital stock of said Company, made between March 14, 1909, and September 12, 1909;

6. That defendants Jesson, Brumbaugh and McGinn are jointly and severally liable in the sum of \$3000.00, for surrenders of capital stock of said Company, made between September 13, 1909, and October 12, 1909;

7. That defendants Jesson, McGinn and Brumbaugh are jointly and severally liable in the sum of \$1000.00, for surrenders of capital stock made between October 13, 1909, and January 18, 1910.

8. That the plaintiff is entitled to a decree and Judgment against the above-named defendants for the recovery of the sums above mentioned, and that as to the other defendants in this suit this action should be dismissed.

Dated June 11, 1914.

F. E. FULLER,  
District Judge.

Entered in Court Journal No. 12, page 944.

[Endorsed]: In the District Court for the District of Alaska, Fourth Judicial Division. F. G. Noyes, Receiver, vs. J. A. Jesson et al. Findings of Fact & Conclusions of Law. #1756. Filed in the District Court, Territory of Alaska, 4th Div., Jun. 11, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.  
[156]

*In the District Court for the Territory of Alaska,  
Fourth Division.*

No. 1756.

F. G. NOYES, Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation,

Plaintiff,

vs.

J. A. JESSON et al.,

Defendants.

**Decree.**

BE IT REMEMBERED that on the 22d day of April, A. D. 1914, the above-entitled cause came on regularly for trial before the Court, without a jury, upon the issues as joined between the plaintiff and the defendants J. A. Jesson, R. C. Wood, J. A. Healey, E. R. Peoples, John L. McGinn, Ray Brumbaugh, James W. Hill, John A. Clark and George Preston. The Honorable F. E. Fuller, Judge of said Court, presiding. The plaintiff appeared in person and by his attorney O. L. Rider, and the said defendants R. C. Wood, James W. Hill, E. R. Peoples, and John L. McGinn, appearing by their attorneys A. R. Heilig and John L. McGinn, and the defendants J. A. Jesson, Ray Brumbaugh, J. A. Healey, John A. Clark, George Preston and E. R. Peoples appearing by their attorneys McGowan & Clark, and thereupon the respective parties, plaintiff and defendants, from day to day introduced their testimony in support of said issues until the 6th day of May, 1914, when all of said parties rested and the introduction of said testimony was closed, and thereupon the Court, after

hearing the arguments of counsel and after considering the pleadings and the testimony, and being fully advised in the premises, did, on the 11th day of June, 1914, make and file its findings of fact and conclusions of law upon said issues; and now, to wit, on this 15th day of June, 1914, the Court being fully advised in the premises, it is ordered, adjudged and decreed as follows to wit: [157]

I.

That the plaintiff have and recover of and from the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and severally, the sum of \$33,720 by reason of the declaration and payment on April 12th, 1910, of the dividend upon the capital stock of the Fairbanks Banking Company set up in the complaint.

II.

That the plaintiff have and recover of and from the defendant J. A. Jesson the further sum of \$13,400.00 by reason of the surrender of shares of the capital stock of said company made between July 13, 1908, and September 12, 1908.

III.

That the plaintiff have and recover of and from the defendants J. A. Jesson and James W. Hill, jointly and severally, the further sum of \$1,500.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1908, and October 13, 1908.

IV.

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and E.

R. Peoples, jointly and severally, the further sum of \$1,100.00 by reason of the surrender of shares of the capital stock of said company made between October 14, 1908, and March 13, 1909.

## V.

That the plaintiff have and recover of and from the defendants, J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between March 14, 1909, and September 12, 1909.

## VI.

That the plaintiff have and recover of and from the defendants J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, the further sum of \$3,000.00 by reason of the surrender of shares of the capital stock of said company [158] made between September 13, 1909, and October 12, 1909.

## VII.

That the plaintiff have and recover of and from the defendants J. A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between October 13, 1909, and January 18, 1910.

## VIII.

That the plaintiff take nothing as against the defendants J. A. Healey, John A. Clark and George Preston by reason of any of the matters and things set forth in the complaint herein and that this action be and the same is hereby dismissed as to said J. A. Healey, John A. Clark and George Preston.

## IX.

That the plaintiff take nothing, further than as above specified, against the defendants, R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill, by reason of any of the matters and things set forth in the complaint herein, and that this action be and the same is hereby dismissed as to them in respect to all matters and things set up in the complaint herein, except as to the declaration and payment of said dividend and the surrenders of the shares of the capital stock of said company as above specified;

All of which is now finally ORDERED, ADJUDGED AND DECREED at the cost of the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Let execution issue for the enforcement of above judgment and decree against the defendant R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Dated Fairbanks, Alaska, this 15th day of June, 1914.

F. E. FULLER,  
Judge of the District Court, Territory of Alaska,  
Fourth Division.

Entered in Court Journal No. 12, page 958. [159]

Service of copy accepted this 15 day of June, 1914.

McGOWAN & CLARK,  
JOHN L. MCGINN,  
A. R. HEILIG,  
Attorneys for Defendants.

[Indorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G.



Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Decree. Filed in the District Court, Territory of Alaska, 4th Div., Jun. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [160]

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[Title of Court and Cause.]

**Plaintiff's Bill of Exceptions.**

BE IT REMEMBERED, that on the 18th day of May, 1914, the plaintiff duly served upon counsel for the defendants appearing herein his proposed Findings of Fact and Conclusions of Law in the above-entitled cause, and that the same were, on the 19th day of May, 1914, duly filed in said cause with the Clerk of this Court, wherein plaintiff requested that the Court make Conclusions of Law as follows: [161]

(1) The defendants John A. Jesson, James W. Hill and R. C. Wood are jointly and severally liable for the following items:

Overvaluation of Gold Bar Lumber Com-	
pany stock .....	\$75000
Purchase of Tanana Electric Company	
notes .....	27997.38
Purchase of other past due notes from the	
partnership which are still unpaid...	41911.56
Accrued interest on partnership notes paid	
to Barnette, Hill and Wood and which	
was not collected.....	7500
Balance of accrued interest paid to Bar-	
nette, Hill and Wood on partnership	
notes purchased .....	32142.81

Surrender of Wood's stock..... 13000

(2) The defendants J. A. Jesson, James W. Hill and John L. McGinn are jointly and severally liable for the following items:

Overvaluation of Washington-Alaska

Bank stock ..... 75000

(3) The defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and John A. Jesson are jointly and severally liable for the following item:

Declaring and paying dividend of April 12, 1910, of Fairbanks Banking Company. 33720

(4) The following defendants are jointly and severally liable for surrenders of stock made between July 13, 1908, and September 12, 1908, namely, John A. Jesson and James W. Hill, in the sum of..... 13400

(5) The defendants John A. Jesson and James W. Hill are jointly and severally liable for surrenders of stock made between September 13, 1908, and October 13, 1908, in the sum of..... 1500

(6) The defendants John A. Jesson, James W. Hill and E. R. Peoples are jointly and severally liable for surrenders of stock made between October 14, 1908, and March 13, 1909, in the sum of..... 13100

[162]

(7) The defendants John A. Jesson, James W. Hill and Ray Brumbaugh are jointly and severally liable for surrenders

of stock made between March 14, 1909, and September 12, 1909, in the sum of. . . . . 1000

(8) The defendants John A. Jesson, James W. Hill, Ray Brumbaugh and John L. McGinn are jointly and severally liable for surrenders of stock made between September 13, 1909, and October 12, 1909, in the sum of. . . . . 3000

(9) The defendants John A. Jesson, James W. Hill, John L. McGinn and Ray Brumbaugh are jointly and severally liable for surrenders of stock made between October 13, 1909, and January 18, 1910, in the sum of. . . . . 1000

(10) The defendants John A. Jesson, Ray Brumbaugh, John A. Clark, J. A. Healey and George Preston are jointly and severally liable for surrenders of stock made between January 19, 1910, and October 25, 1910, in the sum of. . . . . 6000

(11) The defendants J. A. Jesson, R. C. Wood, John L. McGinn and Ray Brumbaugh are jointly and severally liable for one year's interest upon the amount invested in the stock of the First National Bank and sold to McGinn and Wood. . . . . 10000

Let decree be entered against the above-named defendants jointly and severally for the above amounts in the manner above stated, and for the costs of this action. [163]

That thereafter, to wit, on the 22d day of May, 1914, the said defendants appearing herein through

their attorneys, John L. McGinn, A. R. Heilig, and McGowan & Clark, duly served upon counsel for plaintiff their proposed Findings of Fact and Conclusions of Law in said cause, and the same were on the 23d day of May, 1914, duly filed in said cause with the clerk of this court, wherein said defendants proposed as Findings of Fact No. 36 and No. 51 thereof, the following, to wit:

### XXXVI.

“That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares.

That said stock was taken in part payment of a loan that the bank had heretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of \$4,000.00 in cash, which fully paid said loan. That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the Board of Directors. That said directors believed at said time that said loan was precarious; and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and for the best interest of the corporation.”

### LI.

“That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of the Washington-Alaska Bank, formerly the Fairbanks

Banking Company, demanded the right to inspect its books and papers, and threatened that unless this right was granted him immediately, to make application for an order permitting him to do so and for the appointment of a receiver of the said Washington-Alaska Bank. That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair public confidence in the Washington-Alaska Bank, and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of \$6,000.00 but it would be necessary for him to borrow money to complete said purchase; that, as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount thereof and paid to said John L. McGinn the sum of \$6000 for his 100 shares of capital stock. That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered his stock to the bank, and the stock was thereafter held, with other treasury stock of the company.”



That thereafter, to wit, on the 25th day of May, 1914, [164] the plaintiff duly served on counsel for said defendants and duly filed in said cause with the clerk of said court, his objections to the Findings of Fact and Conclusions of Law proposed by said defendant, in which he objected to said proposed Findings of Fact No. 36 and No. 51, being plaintiff's objections No. 33 and No. 46, which said objections are as follows, to wit:

“No. 33.—Plaintiff objects to the proposed Findings of Fact number XXXVI, for the reason that the same is not supported by the evidence, is contrary to the evidence, and is argumentative, narrative and evidentiary.

No. 46.—Plaintiff objects to the proposed Findings of Fact number LI, for the reason that the same is not supported by the evidence, is contrary to the evidence, is evidentiary, narrative and argumentative, and for the further reason that the same is an incomplete statement of the matters therein referred to as shown by the evidence.”

That thereafter said Findings of Fact and Conclusions of Law proposed by the plaintiff and the defendants respectively, together with said objections thereto, were duly presented and argued to the Court in open court by counsel for the respective parties.

That the substance of the whole of the testimony introduced and received on the trial of said cause respecting the matter of the surrender of the said stock of the said McGinn is as follows, to wit:

That, at the time when the defendants George

Preston, J. A. Healey, and John A. Clark were directors of the said Washington-Alaska Bank and about the month of October, 1910, and prior to the twelfth day of said month, John L. McGinn, who had theretofore been a director of said Washington-Alaska Bank, formerly Fairbanks Banking Company, and who had for a number of years been attorney for said bank, and was the owner of 100 shares of the capital stock thereof, notified the vice-president and manager of said bank, J. Albert Jackson, that he intended to exercise his rights as a stockholder to examine all the affairs of said bank and would do so, and further stated that he would sell his stock for the sum of \$6000.00. That the stock of said John L. McGinn was of the [165] par value of \$10,000.00; that he had received \$2,000.00 in dividends and that he was willing to sell said stock for the sum of \$6000.00; that he was one of the owners of the First National Bank of Fairbanks, having recently acquired that property, and that he needed all the money he could get; and that, as the First National Bank was a rival bank of the Washington-Alaska Bank, he did not desire to have any stock in the said Washington-Alaska Bank.

That an intense rivalry existed between said banks at said time, and there was keen competition in the purchase of gold-dust and the acquiring of banking business, and said John L. McGinn notified said J. Albert Jackson vice-president and manager of the Washington-Alaska Bank, that he would exercise his right as a stockholder to demand an inspection of the books of said Washington-Alaska Bank and

other records, thus enabling him to secure information respecting the clients, customers, creditors and debtors of the said Washington-Alaska Bank that could be by him used to the advantage of said First National Bank and greatly to the detriment of said Washington-Alaska Bank.

That said demand and said statements were by said J. Albert Jackson reported to the Board of Directors or the greater part thereof, and an informal discussion was had by a number of said directors as to what was advisable to be done; that it was also reported by said vice-president and manager, J. Albert Jackson, that said McGinn had threatened that if his demand for an inspection of the books and records of said bank was not complied with he would bring a suit against the said Washington-Alaska Bank as a stockholder thereof, asking for the appointment of a receiver, on the ground that, as a stockholder he was refused information that he was entitled to receive, and on the further ground that the officers of said Washington-Alaska Bank were mismanaging said bank; in that they were paying more for gold-dust than they were justified in paying, and for other acts. [166]

That D. H. Jonas, one of the directors of said bank, stated to the directors, including said defendants, that he was satisfied that he could find a purchaser for said stock at the said price of \$6,000.00; that thereafter and on the 12th day of October, 1910, at the regular monthly meeting of the directors of the Washington-Alaska Bank, the matter was considered by the board of directors and it was then reported

by said D. H. Jonas that he had not been able to see the prospective purchaser, but that he was satisfied that said prospective purchaser would take said stock and would probably require a loan from the bank, as he did not at that time have sufficient money to make said purchase; that it was again reported by the vice-president and manager that said John L. McGinn was insistent on said matter and demanded that it be closed at once.

That at said meeting of 12th October, 1910, it was moved, seconded and duly carried that "The officers extend a loan to the party to whom McGinn would sell and retain the stock in the bank as collateral." That it was reported at the said meeting by said D. H. Jonas that it might be some days before the prospective purchaser could be reached, and it was then decided by said Board of Directors, that, if it became necessary to prevent action being taken by said John L. McGinn, F. W. Hawkins, the cashier of said bank, be loaned the money necessary to pay for the stock, to wit, the sum of \$6,000.00, and that said stock be held as collateral security for said loan, and that, when the prospective purchaser could be communicated with, a new loan could be made to said purchaser and the stock be issued to said purchaser and be held by the bank as collateral security for such new loan.

That, in accordance with said agreement, said F. W. Hawkins borrowed from the said bank the sum of \$6,000.00 which he paid to said John L. McGinn for said stock and said stock was assigned [167] by the said McGinn in blank and said F. W.



Hawkins executed his note to said bank for said sum.

That thereafter, and without the knowledge, consent or approval of the Board of Directors, or of said defendants as members of said board, said F. W. Hawkins cancelled his note and returned said stock to the bank, and said defendants knew nothing of said transaction until after said bank was closed.

That the directors of said Washington-Alaska Bank had with them employees whom they trusted and who were under bond, and who had theretofore, so far as said defendants had knowledge or information, strictly performed the orders given to them by the Board of Directors; that the Board of Directors had no information concerning the subsequent action of said F. W. Hawkins with regard to said stock until after the suspension of said Washington-Alaska Bank.

That said directors refused in behalf of said bank to purchase said stock from said John L. McGinn, and did not purchase said stock, and the surrender of said note by said F. W. Hawkins was wrongful and without authority.

That no information was furnished to said board of directors that would lead them to believe that the officers of said bank had done or performed any act or thing contrary to the instructions given, and said defendants were never informed that the purchaser whom said D. H. Jonas claimed to be available had not purchased said stock.

That at the time it was voted to loan said money to the purchaser of said stock, said stock was con-



sidered by said Board of Directors to be worth a sum in excess of \$6,000.00 and said loan was considered a perfectly safe loan, and said directors had no reason to believe that said bank was not in a perfectly solvent condition or that the McGinn stock was not worth the full sum of \$6,000.00. [168]

That had said McGinn been permitted the rights claimed by him as a stockholder and examined into the affairs of said bank, with a view of ascertaining its clients, customers, creditors and debtors, it would have caused said bank great and irreparable damage and would have resulted to the benefit and advantage of the First National Bank, of which said John L. McGinn was one of the principal owners.

That the substance of the whole of the testimony offered and received on the trial concerning the surrender of said stock of the said Strandberg Brothers, Emma Strandberg and B. E. Johnson was that the said Strandberg Brothers and the said B. E. Johnson were mining copartners and that the said Emma Strandberg was the wife of one of the said Strandbergs, and that on the 5th day of November, 1908, the said Strandberg Brothers were the owners of 100 shares of the capital stock of said bank of the par value of \$10,000.00, and the said Emma Strandberg was the owner of 10 shares of said stock of the par value of \$1,000.00, and the said B. E. Johnson was the owner of 10 shares of said stock of the par value of \$1,000.00; that on the 5th day of November, 1908, it was resolved by the executive committee, the defendant Hill being present as a member thereof, that a loan of \$15,000.00 be made to Strandberg

Brothers on the security of their 110 shares of Fairbanks Banking Company stock and notes aggregating \$2,500.00, and that thereafter, on November 12, 1908, at a meeting of the Board of Directors at which the defendants, J. A. Jesson, E. R. Peoples and James W. Hill were present, the minutes of the meeting of the executive committee held on said November 5, 1908, were read, and on motion duly made and seconded, were approved, ratified and passed as the action of said board. That pursuant to said proceedings a note in the sum of \$17,050.00 payable to said bank, was executed by David Strandberg and Strandberg Brothers & Johnson, dated November 5th, 1908, due May 31, 1909, and the proceeds thereof in the sum of \$15,000.00 was placed to the credit of Strandberg Brothers & Johnson in their deposit account, and the said note of \$17,050.00 was secured by the said stock of the said Strandberg [169] Brothers and Johnson as collateral.

That at a meeting of said executive committee held on November 18, 1908, the defendants, J. A. Jesson and James W. Hill being present as members thereof, the matter of taking over the Strandberg Brothers and Johnson stock was discussed, and the minutes thereof further reciting that "In taking over this stock the proceeds were to apply to the taking up of the loan of Strandberg Brothers to the bank. It was moved by Ryan, seconded by Jonas, that Mr. J. A. Jesson take up the stock of Strandberg Brothers and Johnson at par on behalf of the bank. Motion carried." That at a meeting of the Board of Directors held on December 12, 1908, at

which the defendants James W. Hill, E. R. Peoples and J. A. Jesson were present as members thereof, the minutes of said meeting of the executive committee held on said November 18, 1908, were read, and on motion duly made and seconded were approved, ratified and passed as the action of the board.

That on November 19, 1908, said note was cancelled and surrendered to the makers thereof, and said bank took up and cancelled the said stock of the said Strandberg Brothers and the said B. E. Johnson, aggregating \$11,000.00 as aforesaid, and in addition thereto received from said Strandberg Brothers and Johnson the sum of \$4,000.00 in cash. Said stock was charged to the account of Treasury stock and the deposit account of Strandberg Brothers & Johnson was credited \$15,000.00 and subsequently the same was withdrawn by them. Afterwards, on November 25, 1908, the deposit account of Emma Strandberg was credited \$1,000.00 being the par value of her said stock, and her 10 shares of stock cancelled and charged to Treasury stock, and the amount so credited to her account was by her subsequently, to wit, on February 16, 1909, drawn out by her. That said Board of Directors believed, at the time said stock was taken up, that said loan was precarious, and said directors in taking said stock in partial satisfaction of said loan did so in good faith and in the belief that it was [170] for the best interest of said corporation. That in order to get the said Strandberg Brothers & Johnson to take up said note and make said cash payment as afore-

said, it was necessary to include in said settlement the said stock of the said Emma Strandberg.

That on the 12th day of June, 1914, the Court made and filed in said cause with the clerk of said court, his Findings of Fact and Conclusions of Law in which the Court granted defendants' proposed Findings of Fact No. 36 and No. 51, the same being Findings of Fact by the Court No. 45 and No. 49, and denied plaintiff's said objections No. 33 and No. 46, and denied plaintiff's said proposed Conclusions of Law numbers 1, 2, 10 and 11 entirely, and denied plaintiff's proposed Conclusions of Law No. 6 in so far as the same relates to the surrender of \$12,000.00 worth of stock.

That on the 15th day of June, 1914, the Court entered decree in the above-entitled action in conformity with said Conclusions of Law made by the Court.

AND NOW, in order that the exceptions of the plaintiff duly taken at the time of said proceedings respecting the foregoing matters were had and done, may be preserved of record.

**[Exceptions.]**

BE IT REMEMBERED, that said exceptions are as follows, to wit:

I.

To the granting of defendant's said proposed Findings of Fact number 36, and to the making of said Finding of Fact number 45 by the Court, the plaintiff at the time duly excepted and still excepts for the reason that the same is contrary to the evidence, and is an incomplete finding as to the matter



of the surrender of said shares of stock owned by the said Strandberg Brothers, the said Emma Strandberg and the said B. E. Johnson in that it fails to find that at the time that the said note of the said Strandberg Brothers was given the said shares of stock of the said Strandberg Brothers were accepted by the bank as collateral security therefor. [171]

## II.

To the granting of the defendants' said proposed Findings of Fact number 51, and to the making of said Finding of Fact number 49 by the Court, plaintiff at the time duly excepted and still excepts, for the reason that the same is contrary to the evidence, and an incomplete finding of fact as to the matter of the surrender of said stock of the said McGinn in that it fails to find that the cashier of said bank, one F. W. Hawkins, in the matter of the taking up of the stock, and in borrowing from said bank the money which he paid to the said McGinn therefor, and in executing to said bank his note for said money, acted at the direction of the Board of Directors of said bank and thereby became the agent of said bank in said matter.

## III.

To the denial of plaintiff's proposed Conclusions of Law numbered one plaintiff duly excepted at the time and still excepts, for the reason that the same is contrary to the evidence, contrary to the facts found by the Court, and contrary to law.

## IV.

To the denial of that portion of plaintiff's pro-



posed Conclusions of Law number one, which is as follows: "Purchase of Tanana Electric Company notes \$27,997.38," plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

#### V.

To the denial of that portion of plaintiff's proposed Conclusions of Law number one which is as follows: "Purchase of other notes past due, from the partnership of \$41,911.56," plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

#### VI.

To the denial of that portion of plaintiff's proposed Conclusions of Law number one which is as follows: "Accrued interest on partnership notes paid to Barnette, Hill and Wood [172] and which was not collected, \$7,500.00," plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court and contrary to law.

#### VII.

To the denial of that portion of plaintiff's proposed Conclusions of Law number one, which is as follows: "Balance of accrued interest paid to Barnette, Hill and Wood on partnership notes purchased, \$32,142.81," plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

## VIII.

To the denial of that portion of plaintiff's proposed Conclusions of Law number one, which is as follows: "Surrender of Wood's stock, \$13,000.00," plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

## IX.

To the denial of plaintiff's proposed Conclusions of Law number six in so far as the same relates to the surrender of \$12,000.00 worth of stock, being the stock of Strandberg Brothers, \$10,000, Emma Strandberg, \$1,000, B. E. Johnson, \$1,000, plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts as found by the Court, contrary to the evidence, and contrary to law.

## X.

To the denial of plaintiff's proposed Conclusions of Law number ten, plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

## XI.

To the denial of plaintiff's proposed Conclusions of Law number eleven, plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court and contrary to law. [173]

## XII.

To the eighth Conclusion of Law by the Court in so far as it dismisses plaintiff's action; plaintiff

duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

XIII.

To paragraph VIII of the decree entered herein; plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court, and contrary to law.

XIV.

To paragraph IX of the decree entered herein; plaintiff duly excepted at the time and still excepts for the reason that the same is contrary to the facts found by the Court and contrary to law.

AND NOW, in furtherance of justice and in order that the foregoing matters may become a part of the record in this case and within the time allowed by law to prepare, serve, file and have settled his Bill of Exceptions in this case, the plaintiff herewith presents the foregoing Bill of Exceptions in the above entitled cause and prays that the same may be settled, signed and allowed by the Judge of this court in the manner prescribed by law.

O. L. RIDER,

Attorney for Plaintiff. [174]

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[Title of Court and Cause.]

**Order Allowing and Settling Plaintiff's Bill of  
Exceptions.**

And now, on the 6th day of July, 1914, the above-named plaintiff, in the manner prescribed by law and the practice of this court, having presented to

the Court for allowance and settlement his Bill of Exceptions in the above-entitled cause, the plaintiff appearing by his attorney, O. L. Rider, and the defendants J. A. Jesson, James W. Hill, R. C. Wood, John L. McGinn, Ray Brumbaugh, E. R. Peoples, John A. Clark, J. A. Healey and George Preston appearing by John L. McGinn, their attorney:

And it appearing to the Court that said Bill of Exceptions has been heretofore, and within the time allowed by law, served upon the attorneys for said defendants in due form, and that the same has been filed with the clerk of this court within the time allowed by law, and that the time for filing amendments thereto has expired, and that said Bill of Exceptions is true and correct in all particulars and contains a true and correct statement of the exceptions taken in due time by the plaintiff together with so much of the proceedings had and done therein as is necessary to explain said objections and each of them, and also contains a true, full and correct copy of the Conclusions of Law asked for by the plaintiff in said cause, and a true, full and correct copy of Findings of Fact Nos. 36 and 51 asked for by the defendants, and a true, full and correct copy of plaintiff's objections thereto numbered 33 and 46, together with a true, full and correct statement of the rulings of the Court on said proposed [175] Conclusions of Law, Findings of Fact and objections thereto;

And the Court being fully advised in the premises, IT IS ORDERED that the foregoing Bill of Exceptions be, and the same is hereby allowed, settled, approved and signed as Plaintiff's Bill of Excep-

tions in said cause, and the same is hereby ordered filed with the clerk of this court and made a part of the record in this cause.

F. E. FULLER,  
District Judge.

Entered in Court Journal No. 2, page 24, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 4.

Service of copy of the within Plaintiff's Bill of Exceptions and Order of Court allowing and settling the same is hereby acknowledged this 22 day of June, 1914.

J. L. MCGINN,  
A. R. HEILIG,  
McGOWAN & CLARK,  
Attorneys for Defendants.

[Endorsed]: No. 1756. F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants. Plaintiff's Bill of Exceptions. (Proposed.) Filed in the District Court, Territory of Alaska, 4th Div. Jun. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. [176]

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[Title of Court and Cause.]

**Petition for Allowance of Appeal and Order  
Granting Same.**

To the Honorable Charles E. Bunnell, District Judge:

The above-named plaintiff, F. G. Noyes, Receiver of Washington-Alaska Bank, a corporation or-



ganized under the laws of the State of Nevada, feeling himself aggrieved by the decree made and entered in this cause on the 15th day of June, A. D. 1914, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California; and your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

O. L. RIDER,

Attorney for Plaintiff.

Service of the foregoing petition for allowance of appeal is hereby admitted at Fairbanks, Alaska, on the 28 day of January, A. D. 1915, by receipt of a copy thereof.

McGOWAN & CLARK,

Attys. for J. A. Jesson, Hill, Brumbaugh, Clark & Preston, Defdts.

JOHN L. MCGINN and

A. R. HEILIG,

Attorneys for Defendants McGinn, Wood, Peoples & Healey. [177]

**[Order Allowing Appeal, etc.]**

The foregoing petition is granted and the appeal allowed upon giving bond for costs conditioned as required by law, in the sum of \$500.00.

CHARLES E. BUNNELL,

Judge of the District Court for the Territory of  
Alaska, Fourth Judicial Division.

Entered in Court Journal No. 13, page 29.

[Indorsed]: No. 1756. F. G. Noyes, Receiver, etc.,  
Plaintiff, vs. J. A. Jesson et al., Defendants. Peti-  
tion for Allowance of Appeal and Order Granting  
Same. Filed in the District Court, Territory of  
Alaska, 4th Div. Jan. 28, 1915. Angus McBride,  
Clerk. [178]

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[Title of Court and Cause.]

**Order Allowing Appeal.**

On motion of O. L. Rider, attorney for the above-named plaintiff, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore filed and entered herein be, and the same is hereby, allowed and that certified transcript of the record, proceedings and papers herein be forthwith transmitted to the United States Circuit Court of Appeals.

It is further ordered that the bond for costs on appeal be fixed at the sum of \$500.00, conditioned as provided by law.

Dated at Fairbanks, Fourth Judicial Division,  
Territory of Alaska, this 28th day of January, 1915.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 29.

Service of the foregoing order allowing appeal  
admitted and a true copy thereof received this 28 day  
of January, 1915.

McGOWAN & CLARK,

Attys. for Defdts. J. A. Jesson, Hill, Brumbaugh,  
Clark & Preston.

JOHN L. MCGINN, and

A. R. HEILIG,

Attorneys for Defendants McGinn, Wood, Peoples  
& Healey. [179]

[Indorsed]: No. 1756. F. G. Noyes, Receiver, etc.,  
Plaintiff, vs. J. A. Jesson et al., Defendants. Order  
Allowing Appeal. Filed in the District Court, Ter-  
ritory of Alaska, 4th Div. Jan. 28, 1915. Angus  
McBride, Clerk. [180]

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[Title of Court and Cause.]

**Plaintiff's Assignments of Error.**

And now, on this 28 day of January, A. D. 1915,  
comes the plaintiff by his attorney, O. L. Rider, and  
says that the decree entered in the above cause on the  
15th day of June, A. D. 1914, is erroneous and unjust  
to the said plaintiff, and he files with his petition for  
appeal the following assignments of error upon  
which he will rely on his appeal from the decree made  
by this Honorable Court on the 15th day of June,  
A. D. 1914, in the above-entitled cause:

## I.

The Court erred in granting defendants' proposed finding of fact No. XXXVI, and in adopting the same over plaintiff's objection as finding of fact XLV by the Court, which is as follows:

"That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares.

That said stock was taken in part payment of a loan that the bank had theretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of \$4,000 in cash, which fully paid said loan.

That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the Board of Directors.

That said directors [181] believed at said time that said loan was precarious, and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and believing it to be for the best interests of the corporation."

## II.

The Court erred in granting defendants' proposed finding of fact No. LI and in adopting the same over plaintiff's objection as finding of fact No. XLIX by the Court, which is as follows:

"That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of

the Washington-Alaska Bank, formerly the Fairbanks Banking Company, demanded the right to inspect its books and papers, and threatened that, unless this right was granted him immediately, to make application for an order permitting him to do so and for the appointment of a receiver of the said Washington-Alaska Bank.

That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair the public confidence in the Washington-Alaska Bank, and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of \$6,000, but it would be necessary for him to borrow money to complete said purchase; that as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount thereof, and paid to said John L. McGinn the sum of \$6,000.00 for his 100 shares of capital stock.

That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered the stock to the bank, and the stock was thereafter held,



with other treasury stock of the company.”

### III.

The Court erred in denying plaintiff’s proposed conclusion of law No. 1, which is as follows:

“The defendants John A. Jesson, James W. Hill, and R. C. Wood are jointly and severally liable for the following items:

Overvaluation of Gold Bar Lumber Company stock.....	\$75000.
Purchase of Tanana Electric Company notes,.....	27997.38
Purchase of other past due notes from the partnership which are still unpaid,...	41911.56
Accrued interest on partnership notes paid to Barnette, Hill and Wood and which was not collected,.....	7500.
Balance of accrued interest paid to Barnette, Hill and Wood partnership.....	
notes purchased.....	32142.81

[182]

Surrender of Wood’s stock.....	13000.00
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### IV.

The Court erred in denying that portion of plaintiff’s proposed conclusion of law No. 1, which is as follows:

“Purchase of Tanana Electric Company notes.....\$27997.38”

### V.

The Court erred in denying that portion of plaintiff’s proposed conclusion of law No. 1, which is as follows:

“Purchase of other notes past due from the partnership.....\$41911.56”

## VI.

The Court erred in denying that portion of plaintiff's proposed conclusion of law No. 1, which is as follows:

“Accrued interest on partnership notes  
paid to Barnette, Hill and Wood  
and which was not collected.....\$7500.”

## VII.

The Court erred in denying that portion of plaintiff's proposed conclusion of law No. 1, which is as follows:

“Balance of accrued interest paid to  
Barnette, Hill and Wood on  
partnership notes purchased....\$32142.81”

## VIII.

The Court erred in denying that portion of plaintiff's proposed conclusion of law No. 1, which is as follows:

“Surrender of Wood's stock,.....\$13000.”

## IX.

The Court erred in denying plaintiff's proposed conclusion of law No. 6 in so far as the same relates to the surrender of \$12,000 worth of stock, being the stock of Strandberg Brothers \$10,000, Emma Strandberg, \$1,000, B. E. Johnson, \$1,000, which said conclusion of law is as follows:

“The defendants John A. Jesson, James W. Hill and E. R. Peoples are jointly and severally liable for surrenders of stock made between October 14, 1908, and March 13, 1909, in the sum of \$13,100.00.”

## X.

The Court erred in denying plaintiff's proposed conclusion of law No. 10, which is as follows:

"The defendants John A. Jesson, Ray Brumbaugh, John A. Clark, J. A. Healey, and George Preston are jointly and severally liable for surrenders of stock made between January 19, 1910, and October 25, 1910, in the sum of \$6,000.00."

## XI.

The Court erred in denying plaintiff's proposed conclusion of law No. 11, which is as follows:

"The defendants J. A. Jesson, R. C. Wood, John L. McGinn and Ray Brumbaugh are jointly and severally liable for one year's interest upon the amount invested in the stock of the First National Bank and sold to McGinn and Wood \$10,000.00."

## XII.

The Court erred in making that portion of conclusion of law No. 8 by the Court, which is as follows:

"and that as to the other defendants in this suit this action should be dismissed."

## XIII.

The Court erred in making and entering paragraph 8 of the decree herein, which is as follows:

"That the plaintiff takes nothing as against the defendants J. A. Healey, John A. Clark and George Preston by reason of any of the matters and things set forth in the complaint herein and that this action be and the same is hereby dismissed as to said J. A. Healey and John A. Clark and George Preston."

## XIV.

The Court erred in making and entering para-

graph 9 of the decree herein, which is as follows:

“That the plaintiff take nothing, further than as above specified, against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill, by reason of any of the matters and things set forth in the complaint herein, and that this action be and the same is hereby dismissed as to them in respect to all matters and things set up in the complaint herein, except as to the declaration and payment of said dividend and the surrender of the shares of the capital stock of said company as above specified.” [184]

#### XV.

The Court erred in refusing to enter judgment and decree in favor of plaintiff and against the defendants, J. A. Jesson, James W. Hill and E. R. Peoples, on account of the surrender of \$12,000.00 worth of stock between October 14, 1908, and March 13, 1909, being the stock of Strandberg Brothers, \$10,000, Emma Strandberg, \$1,000.00, B. E. Johnson, \$1,000, and in dismissing plaintiff's action therefor.

#### XVI.

The Court erred in refusing to enter judgment and decree in favor of the plaintiff and against the defendants, J. A. Jesson, Ray Brumbaugh, John A. Clark, J. A. Healey and George Preston in the sum of \$6,000.00 for surrenders of stock made between January 19, 1910, and October 25, 1910, and in dismissing plaintiff's action therefor.

#### XVII.

The Court erred in refusing to make and enter decree and judgment against the defendants J. A.

Jesson, James W. Hill and R. C. Wood in the sum of \$27,997.38, on account of the purchase of the Tanana Electric Company notes.

### XVIII.

The Court erred in refusing to make and enter judgment and decree in favor of the plaintiff and against the defendants, J. A. Jesson, James W. Hill and R. C. Wood in the sum of \$41,911.56 on account of the purchase from the partnership of notes other than said Tanana Electric Company notes, which were past due at the time of purchase and are still unpaid.

### XIX.

The Court erred in refusing to make and enter judgment in favor of the plaintiff and against the defendants, J. A. Jesson, James W. Hill and R. C. Wood, in the sum of \$7,500.00, on account of accrued interest on notes purchased from the partnership, which was paid to Barnette, Hill and Wood, and which is still uncollected. [185]

### XX.

The Court erred in refusing to make and enter judgment in favor of the plaintiff and against the defendants J. A. Jesson, James W. Hill and R. C. Wood, in the sum of \$32,142.81 on account of the balance of accrued interest paid to Barnette, Hill and Wood on partnership notes purchased.

### XXI.

The Court erred in refusing to make and enter judgment in favor of the plaintiff and against the defendants J. A. Jesson, James W. Hill and R. C. Wood, in the sum of \$13,000.00 on account of the sur-



render of Wood's stock.

WHEREFORE, plaintiff prays that said decree be corrected in the foregoing particulars so as to grant him the relief prayed for by the petition, and that said Court of Appeals shall render a proper decree on the record and that he have such other and further relief as shall be equitable in the premises.

O. L. RIDER,

Attorney for Plaintiff.

Received copy of foregoing assignment of error  
Jan. 28, 1915.

A. R. HEILIG and

JOHN L. MCGINN,

Attys. for McGinn, Wood, Peoples & Healey.

McGOWAN & CLARK,

Attys. for Defdts. J. A. Jesson, Hill, Brumbaugh,  
Clark & Preston.

[Indorsed]: No. 1756. F. G. Noyes, Receiver, etc.,  
Plaintiff, vs. J. A. Jesson et al., Defendants. Plain-  
tiff's Assignments of Error. Filed in the District  
Court, Territory of Alaska, 4th Div. Jan. 28, 1915.  
Angus McBride, Clerk. [186]

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[Title of Court and Cause.]

[Citation (Copy).]

United States of America,  
Territory of Alaska,—ss.

The President of the United States of America, to  
R. C. Wood, John L. McGinn, Ray Brumbaugh,  
J. A. Jesson, James W. Hill, E. R. Peoples, J.  
A. Healey, John A. Clark and George Preston,  
and Each of You, Greeting:

You, and each of you, are hereby cited and admonished to appear and be at the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal made and entered in the above-entitled cause, in which F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation, is plaintiff, and J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, John L. McGinn, R. C. Wood, C. J. Robinson, W. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenberry and L. N. Jesson, are defendants, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of January, One Thousand Nine Hundred and Fifteen.

CHARLES E. BUNNELL,  
District Judge for the District Court of Alaska,  
Fourth Judicial Division.

[Seal]

Attest: ANGUS McBRIDE,

Clerk.

Service of the foregoing citation and receipt of copy thereof, is hereby accepted and acknowledged

this 29 day of January, A. D. 1915.

McGOWAN & CLARK,  
Attys. for Defdts. J. A. Jesson, Hill, Brumbaugh,  
Clark & Preston.

JOHN L. McGINN and  
A. R. HEILIG,  
Attys. for Defendants McGinn, Wood, Peoples and  
Healey. [187]

[Indorsed]: No. 1756. F. G. Noyes, Receiver, etc.  
Plaintiff, vs. J. A. Jesson et al., Defendants. Cita-  
tion. Filed in the District Court, Territory of  
Alaska, 4th Div. Jan. 28, 1915. McBride, Clerk.  
[188]

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[Title of Court and Cause.]

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS,  
that we, F. G. Noyes, Receiver of the Washington-  
Alaska Bank, a corporation, as principal, and G. W.  
Pennington and A. Bruning, as sureties, are held and  
firmly bound unto the defendants in the full sum of  
five hundred (\$500.00) dollars, to be paid to said de-  
fendants, to which payment well and truly to be  
made we bind ourselves, our heirs, executors and ad-  
ministrators, jointly and severally, firmly by these  
presents.

Sealed with our seals and dated this 20th day of  
February, 1915.

WHEREAS, lately at a term of the District Court  
in the Territory of Alaska, Fourth Division, in a suit  
pending in said Court between F. G. Noyes, receiver  
of the Washington-Alaska Bank, a corporation organ-

ized under the laws of the State of Nevada, as plaintiff and J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, John McGinn, R. C. Wood, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenbury and L. N. Jesson, as defendants, a decree was rendered in favor of the plaintiff in part and against the plaintiff in part, and said plaintiff having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree in the aforesaid cause in certain particulars, and a citation is about to be issued citing and admonishing [189] the defendants J. A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood, and John L. McGinn to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in San Francisco, California, and

WHEREAS, the above-named plaintiff has obtained an order from said Court that the bond on appeal be fixed in the sum of five hundred dollars for costs and damages on appeal.

Now, the condition of the above obligation is such that if the said plaintiff shall prosecute his said appeal to effect and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then this obligation is to be void, other-

wise to remain in force and effect.

F. G. NOYES,

By R. F. ROTH, Atty.,

Principal.

GEO. W. PENNINGTON,

A. BRUNING,

Sureties.

United States of America,

Territory of Alaska,—ss.

Geo. W. Pennington and A. Bruning, whose names are subscribed to the above and foregoing undertaking as sureties, being first duly sworn, each for himself doth depose and say: That he is a resident of the Territory of Alaska; that he is not an attorney or counsellor at law, marshal, clerk of any court, or other officer of any court; that he is worth the sum of Five Hundred (\$500.00) dollars over and above all his just debts and liabilities exclusive of property exempt from execution.

GEO. W. PENNINGTON.

A. BRUNING.

Subscribed and sworn to before me this 20th day of February, 1915.

[Seal]

JOHN F. DILLON,

Commissioner and Ex-officio Justice of the Peace,  
Fairbanks Precinct.

The sufficiency of the sureties on the foregoing bond approved this 20 day of February, A. D. 1915.

CHARLES E. BUNNELL,

District Judge.

[Endorsed]: No. 1756. In the District Court of the United States for the Territory of Alaska, F. G.



Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants. Bond on Appeal. Filed February 20, 1915. Angus McBride, Clerk. By P. R. Wagner, Deputy. [190]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]**

United States of America,  
Territory of Alaska,  
Fourth Division,—ss.

I, Angus McBride, clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify, that the foregoing, consisting of one hundred and ninety (190) pages, numbered from 1 to 190 inclusive, constitutes a full, true and correct transcript of the record on cross-appeal in cause No. 1756, entitled: F. G. Noyes, Receiver of Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, Plaintiff, vs. J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, John L. McGinn, R. C. Wood, C. J. Robinson, W. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John Dusenbury, and L. N. Jesson, defendants, wherein F. G. Noyes, Receiver of Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, is plaintiff and appellant, and J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, John L. McGinn, R. C. Wood, C. J. Robinson, W. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill,

Ray Brumbaugh, J. A. Jackson, John Dusenbury and L. N. Jesson are defendants and appellees, and was made pursuant to and in accordance with the praecipe of the plaintiff and appellant filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith; and I further certify that the costs of preparing said transcript and this certificate, amounting to Eighty-five and 20/100 dollars (\$85.20) has been paid to me by counsel for plaintiff and appellant in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Fairbanks, Alaska, this 23d day of February, 1915.

[Seal] ANGUS McBRIDE,  
Clerk District Court, Territory of Alaska, Fourth  
Division. [191]

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[Endorsed]: No. 2593. United States Circuit Court of Appeals for the Ninth Circuit. E. G. Noyes, as Receiver of Washington-Alaska Bank, a Corporation, Appellant, vs. R. C. Wood, John L. McGinn, Ray Brumbaugh, J. A. Jesson, James W. Hill, E. R. Peoples, J. A. Healey, John A. Clark and George Preston, Appellees. Transcript of Record.

Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

Received March 18, 1915.

F. D. MONCKTON,

Clerk.

Filed April 1, 1915.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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[Title of Court and Cause.]

**Citation [on Appeal (Original)].**

United States of America,  
Territory of Alaska,—ss.

The President of the United States of America, to  
R. C. Wood, John L. McGinn, Ray Brumbaugh,  
J. A. Jesson, James W. Hill, E. R. Peoples, J.  
A. Healey, John A. Clark and George Preston,  
and Each of You, Greeting:

You, and each of you, are hereby cited and admon-  
ished to appear and be at the United States Circuit  
Court of Appeals for the Ninth Circuit at San Fran-  
cisco, California, within thirty days from the date  
hereof, pursuant to an order allowing an appeal made  
and entered in the above-entitled cause, in which F.  
G. Noyes, Receiver of the Washington-Alaska Bank,  
a corporation, is plaintiff, and J. A. Jesson, D. H.  
Jonas, David Yarnell, Dan Ryan, John L. McGinn,  
R. C. Wood, C. J. Robinson, W. H. McMullen, C. E.

Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenberry and L. N. Jesson, are defendants, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28 day of January, one thousand nine hundred and fifteen.

CHARLES E. BUNNELL,  
District Judge for the District Court of Alaska,  
Fourth Judicial Division.

[Seal]                      Attest: ANGUS McBRIDE,  
Clerk.

Service of the foregoing citation and receipt of copy thereof, is hereby accepted and acknowledged this 29 day of January, A. D. 1915.

McGOWAN & CLARK,  
Attys. for Defts., J. A. Jesson, Hill, Brumbaugh,  
Clark and Preston.

JOHN L. McGINN and  
A. R. HEILIG,  
Attys. for Defendants, McGinn, Wood, Peoples and  
Healey.

[Endorsed]: No. 1756. F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants, Citation. Filder in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Augus McBride, Clerk. By —————, Deputy.

No. 2593. United States Circuit Court of Appeals for the Ninth Circuit. Citation on Appeal. Received Mar. 18, 1915. F. D. Monckton, Clerk. Filed Apr. 1, 1915, Frank D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

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[Title of Court and Cause.]

**[Order Extending Return Day to May 1, 1915.]**

It having been stipulated and agreed by and between the parties hereto, through their respective attorneys, that the return day and the time for docketing the appeal in this action may be extended to and including the first day of May, 1915, on account of the great distant between Fairbanks, Alaska, and San Francisco, California, and the uncertainty of the mails,

NOW, THEREFORE, IT IS HEREBY ORDERED that the return day and the time for docketing said cause be extended to include the first day of May, 1915.

Dated at Fairbanks, Alaska, this 20th day of February, 1915.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 33.

[Endorsed]: No. 1756. In the District Court of the United States for the Territory of Alaska. F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson, et al., Defendants. Order Extending Return Day. Filed February 20, 1915. Angus McBride, Clerk. By P. R. Wagner, Deputy.



No. 2593. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 1, 1915, to File Record Thereof and to Docket Case. Filed Mar. 18, 1915. F. D. Monckton, Clerk. Refiled Apr. 1, 1915. F. D. Monckton, Clerk.